

ROSS WERSCHING & WOLCOTT LLP  
William C. O'Neill / Bar No. 251071  
WCO@RossLLP.com  
3151 Airway Avenue, Building S-1  
Costa Mesa, California 92626  
Telephone: (714) 444-3900  
Facsimile: (714) 444-3901

HAYNES AND BOONE, LLP  
Mark D. Erickson / Bar No. 104403  
mark.erickson@haynesboone.com  
Kenneth G. Parker / Bar No. 182911  
kenneth.parker@haynesboone.com  
Martin M. Ellison / Bar No. 292060  
martin.ellison@haynesboone.com  
Christopher B. Maciel / Bar No. 300733  
chris.maciel@haynesboone.com  
600 Anton Boulevard, Suite 700  
Costa Mesa, California 92626  
Telephone: (949) 202-3000  
Facsimile (949) 202-3001

Attorneys for Defendant  
PHOENIX FIBERS, INC.

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

SWEET PEOPLE APPAREL, INC.  
d/b/a MISS ME, a California  
corporation, et al.,

Plaintiffs,

v.

PHOENIX FIBERS, INC., an  
Arizona corporation, et al.,

Defendants.

Case No. 2:16-cv-00940-TJH-JC

Hon. Terry J. Hatter, Jr.

**CONSOLIDATED SEPARATE  
STATEMENT**

*[Reply Brief; Declaration of William C.  
O'Neill; and Objections filed  
concurrently herewith]*

Hearing Date: January 30, 2017

Hearing Time: Under submission

Place of Hearing: Courtroom 9B  
First Street  
Courthouse

Defendant Phoenix Fibers, Inc. (“Phoenix Fibers”) respectfully submits this Consolidated Separate Statement, which contains both Phoenix Fibers’ reply to Sweet People Apparel, Inc. and RCRV, Inc.’s (collectively, “Plaintiffs”) responses and Phoenix Fibers’ responses to Plaintiffs’ statements of fact.

**I. PHOENIX FIBERS’ STATEMENT OF UNCONTROVERTED FACTS  
(AND PLAINTIFFS’ RESPONSES)**

**A. Defendant Phoenix Fibers’ Business**

1. Defendant Phoenix Fibers is an Arizona-based clothing and textile recycling company that was founded in July 2011. (Appendix of Exhibits (“App. Ex.”) LL; Declaration of Tod Kean (“Kean Decl. (App. Ex. A)”) ¶ 2.) In the textile recycling industry, clothes are recycled in various ways. One way in which clothes are recycled within the clothing recycling industry is to sell them as “credential.” (Declaration of Steven Johnson (“Johnson Decl. (App. Ex. B)”) ¶ 3; Kean Decl. (App. Ex. A) ¶ 6).

**Plaintiffs’ Response:** Disputed. Phoenix Fibers was founded “[t]o make shoddy [fiber].” (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)). Specifically, “Phoenix Fibers was founded to provide a stable source of raw material for Bonded Logic’s business of manufacturing denim cloth-based insulation under the name UltraTouch Denim.” (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)). Phoenix Fibers and Bonded Logic are affiliated companies owned by the Kean family. (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”); ¶39, Ex. KK (“Chandler firm grows; recycles denim material into insulation”)). Bonded Logic is in the business of manufacturing insulation products, including its flagship product, UltraTouch Denim Insulation. Shoddy fiber created from recycled denim is the raw material that Bonded Logic uses to manufacturer UltraTouch Denim Insulation.

(Salzmann Decl. ¶24, Ex. V (SP/RCRV005629); ¶39, Ex. KK (“Chandler firm grows; recycles denim material into insulation”); ¶40, Ex. LL (“Green Chandler company looks to bask in solar savings”); ¶41, Ex. MM (“Chandler company turns worn-out blue jeans into insulation, more”)). Prior to launching Phoenix Fibers, Bonded Logic sourced shoddy fiber from a shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C (Kean 65:10-66:21)). As Tod Kean explained: “We used to procure our raw material for the production of insulation from other shredders. But because of instability in both prices and supply, we decided to open Phoenix to become vertically integrated by controlling our own source of raw materials.” (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)). Today, Phoenix Fibers receives clothing “by the truckload” from various sources for shredding, and processes 900 to a million pounds of denim and cotton products into shoddy fiber every month. (Salzmann Decl. ¶4, Ex. B (Johnson 77:2-4); ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)).

Phoenix Fibers was not in the business of selling “credential” when the company was launched in July 2011. That aspect of Phoenix Fibers’ business only came into existence at a later date. There is no evidence that Phoenix Fibers was engaged in the sale of credential in November 2011, at the time Plaintiffs and Phoenix Fibers came to an agreement to convert Plaintiffs’ second-quality denim products into shoddy fiber. (Salzmann Decl. ¶5, Ex. C (Kean 17:20- 18:9); ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)).

**Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections] at 20-27, 29-38.) Plaintiffs’ evidence does not contradict Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply Brief submitted

1 currently herewith.

2 2. In the context of recycling clothing and Phoenix Fibers' industry,  
3 "credential" means clothing or shoes, sold in bulk, and sold by the pound.  
4 (Johnson Decl. (App. Ex. B) ¶ 3; Kean Decl. (App. Ex. A) ¶ 6.)

5 **Plaintiffs' Response:** Disputed. "Credential" can include things such as  
6 "sheets, towels, pillow cases, lamps,...bric-a-brac" (Salzmann Decl. ¶4, Ex.  
7 B (Johnson 29:20-25)), "miscellaneous household items" and "toaster  
8 ovens" (Salzmann Decl. ¶5, Ex. C (Kean 15:17-20)).

9 **Phoenix Fibers' Reply:** Plaintiffs rely wholly on inadmissible evidence in  
10 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.'s Objections]  
11 at 20, 26-27, 39.) Plaintiffs' evidence does not contradict Phoenix Fibers'  
12 statement or evidence, for the reasons set forth in the Reply Brief submitted  
13 currently herewith. Moreover, Plaintiffs cited evidence does not create a  
14 genuine dispute that "in *the context of recycling clothing*," "credential"  
15 means clothing or shoes sold in bulk and sold by the pound. Toaster ovens  
16 and miscellaneous household items are not clothing.

17 3. Another way of recycling clothes and textiles is repurposing them by  
18 simply reselling them in consignment or thrift shops. (Declaration of Christopher  
19 Maciel ("Maciel Decl. (App. Ex. C)") ¶¶ 6-12; App. Ex. I-O; Johnson Decl. (App.  
20 Ex. B) ¶ 4.)

21 **Plaintiffs' Response:** Disputed to the extent not material to Plaintiffs'  
22 claims, as the parties' agreement related to recycling of Plaintiffs' products  
23 into shoddy fiber. As Ms. Song testified at her deposition: "we would send  
24 the inventory that we needed to -- that we wanted to use as part of our -- one  
25 of our green initiative programs. Phoenix Fibers would break down the  
26 inventory sent to them, shred it and create insulation that they would pass  
27 along to Bonded Logic, who insulated houses in need. (Salzmann Decl. ¶8,  
28 Ex. F (Song 67:11-24 (emphasis added)); *see also* 28:10-29:3).

**Phoenix Fibers' Reply:** Plaintiffs rely wholly on inadmissible evidence in attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections] at 20, 28, 56-57.) Plaintiffs' evidence does not contradict Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

4. A third way is to turn the clothes into something else entirely. (Johnson Decl. (App. Ex. B) ¶ 5; Kean Decl. (App. Ex. A) ¶ 7; Maciel Decl. (App. Ex. C) ¶ 10; App. Ex. M.)

**Plaintiffs' Response:** Disputed only to the extent this suggests there was any other way to recycle Plaintiffs' goods under the parties' agreement, otherwise undisputed. Phoenix Fibers was founded to "[t]o make shoddy [fiber]." (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ ("Shredding Clothing Nets Big Rewards for Phoenix Fibers")). Specifically, "Phoenix Fibers was founded to provide a stable source of raw material for Bonded Logic's business of manufacturing denim cloth-based insulation under the name UltraTouch Denim." (Salzmann Decl. ¶38, Ex. JJ ("Shredding Clothing Nets Big Rewards for Phoenix Fibers")). Phoenix Fibers and Bonded Logic are affiliated companies owned by the Kean family. (Salzmann Decl. ¶38, Ex. JJ ("Shredding Clothing Nets Big Rewards or Phoenix Fibers"); ¶39, Ex. KK ("Chandler firm grows; recycles denim material into insulation")). Bonded Logic is in the business of manufacturing insulation products, including its flagship product, UltraTouch Denim Insulation. Shoddy fiber created from recycled denim is the raw material that Bonded Logic uses to manufacture UltraTouch Denim Insulation. (Salzmann Decl. ¶24, Ex. V (SP/RCRV005629); ¶39, Ex. KK ("Chandler firm grows; recycles denim material into insulation"); ¶40, Ex. LL ("Green Chandler company looks to bask in solar savings"); ¶41, Ex. MM ("Chandler company turns worn-out blue jeans into insulation, more")).

Prior to launching Phoenix Fibers, Bonded Logic sourced shoddy fiber from a shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C (Kean 65:10-66:21)). As Tod Kean explained: “We used to procure our raw material for the production of insulation from other shredders. But because of instability in both prices and supply, we decided to open Phoenix to become vertically integrated by controlling our own source of raw materials.” (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)). Today, Phoenix Fibers receives clothing “by the truckload” from various sources for shredding, and processes 900 to a million pounds of denim and cotton products into shoddy fiber every month. (Salzmann Decl. ¶4, Ex. B (Johnson 77:2-4); ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)).

**Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections] at 20-25, 29-39.) Plaintiffs’ evidence does not contradict Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

5. Phoenix Fibers is solely a clothing and textile recycling company that engages in three types of recycling. First, Phoenix Fibers accepts donations of clothing that it then sells, by the pound and in bulk, as credential. Second, Phoenix Fibers accepts donations of clothing, converts that clothing through a proprietary shredding process into shoddy or filler fiber, and then sells it to companies that use this fiber for various purposes (e.g., for housing, automotive, and appliance insulation). Third, *for a fee*, Phoenix Fibers agrees to destroy certain clothing items and produces a certificate of destruction to the customer. (Johnson Decl. (App. Ex. B) ¶ 6; Kean Decl. (App. Ex. A) ¶ 8.)

**Plaintiffs’ Response:** Disputed. Phoenix Fibers was founded “[t]o make shoddy [fiber].” (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ



(“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)).

specifically, “Phoenix Fibers was founded to provide a stable source of raw material for Bonded Logic’s business of manufacturing denim cloth-based insulation under the name UltraTouch Denim.” (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)). Phoenix Fibers and Bonded Logic are affiliated companies owned by the Kean family. (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”); ¶39, Ex. KK (“Chandler firm grows; recycles denim material into insulation”)). Bonded Logic is in the business of manufacturing insulation products, including its flagship product, UltraTouch Denim Insulation. Shoddy fiber created from recycled denim is the raw material that Bonded Logic uses to manufacture UltraTouch Denim Insulation. (Salzmann Decl. ¶24, Ex. V (SP/RCRV005629); ¶39, Ex. KK (“Chandler firm grows; recycles denim material into insulation”); ¶40, Ex. LL (“Green Chandler company looks to bask in solar savings”); ¶41, Ex. MM (“Chandler company turns worn-out blue jeans into insulation, more”)).

Prior to launching Phoenix Fibers, Bonded Logic sourced shoddy fiber from a shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C (Kean 65:10-66:21)). As Tod Kean explained: “We used to procure our raw material for the production of insulation from other shredders. But because of instability in both prices and supply, we decided to open Phoenix to become vertically integrated by controlling our own source of raw materials.” (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)). Today, Phoenix Fibers receives clothing “by the truckload” from various sources for shredding, and processes 900 to a million pounds of denim and cotton products into shoddy fiber every month. (Salzmann Decl. ¶4, Ex. B (Johnson 77:2-4); ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)). Phoenix Fibers was not in

1 the business of selling “credential” when the company was launched in July  
 2 2011. That aspect of Phoenix Fibers’ business only came into existence at a  
 3 later date. There is no evidence that Phoenix Fibers was engaged in the sale  
 4 of credential in November 2011, at the time Plaintiffs and Phoenix Fibers  
 5 came to an agreement to convert all of Plaintiffs’ second-quality denim  
 6 products into shoddy fiber. (Salzmann Decl. ¶5, Ex. C (Kean 17:20-18:9);  
 7 ¶38, Ex. JJ (“Shredding Clothing Nets Big Rewards for Phoenix Fibers”)).  
 8 **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
 9 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
 10 at 20-25, 29-39.) Plaintiffs’ evidence does not contradict Phoenix Fibers’  
 11 statement or evidence, for the reasons set forth in the Reply Brief submitted  
 12 currently herewith.

13 6. Tod Kean is the president and an owner of Phoenix Fibers. (Kean  
 14 Decl. (App. Ex. A) ¶ 1.)

15 **Plaintiffs’ Response:** Undisputed. Tod Kean is also the CEO of Phoenix  
 16 Fibers, and the Secretary and co-founder of Bonded Logic. (Salzmann Decl.  
 17 ¶5, Ex. C (Kean 58:11-16)).

18 **Phoenix Fibers’ Reply:** No reply as this fact is undisputed.

19 7. Steven Johnson is the current plant manager of Phoenix Fibers, and  
 20 has been since around September 2013. (Johnson Decl. (App. Ex. B) ¶ 1; Kean  
 21 Decl. (App. Ex. A) ¶ 10.)

22 **Plaintiffs’ Response:** Undisputed.

23 **Phoenix Fibers’ Reply:** No reply as this fact is undisputed.

24 8. Prior to Mr. Johnson being plant manager, a person named Matt  
 25 Graham was the plant manager, as well as the acting general manager, during the  
 26 startup phase of Phoenix Fibers. (Kean Decl. (App. Ex. A) ¶ 10.)

27 **Plaintiffs’ Response:** Undisputed.

28 **Phoenix Fibers’ Reply:** No reply as this fact is undisputed.



1           9. Mr. Graham started working for Phoenix Fibers in 2011, when the  
2 business started, and left in 2013. (Kean Decl. (App. Ex. A) ¶ 10.)

3           **Plaintiffs' Response:** Undisputed.

4           **Phoenix Fibers' Reply:** No reply as this fact is undisputed.

5           **B. Plaintiff Sweet People Apparel, Inc. ("Sweet People")**

6           10. Plaintiff Sweet People sells certain products, including jeans and  
7 cutoff denim shorts, under the Miss Me brand name. (First Amended Complaint  
8 ("Complaint (App. Ex. H)" ¶ 17.)

9           **Plaintiffs' Response:** Undisputed (although Phoenix Fibers' citation does  
10 not support this statement).

11           **Phoenix Fibers' Reply:** No reply as this fact is undisputed.

12           11. Miss Me brand jeans cost a consumer approximately \$100 at retail.  
13 (Maciel Decl. (App. Ex. C) ¶ 36; App Ex. MM.)

14           **Plaintiffs' Response:** Undisputed.

15           **Phoenix Fibers' Reply:** No reply as this fact is undisputed.

16           12. Lisa Song was an employee of Sweet People from 2009 to February  
17 2014 and worked as a human resources manager during her entire tenure at Sweet  
18 People. (Deposition of Lisa Song ("Song Depo. (App. Ex. D)") 18:19-19:16; App.  
19 Ex. P.)

20           **Plaintiffs' Response:** Disputed. Lisa Song held the title of Human  
21 Resources Manager at Sweet People between 2009 and February 2014.  
22 (Salzmann Decl. ¶8, Ex. F (Song 21:9-12)). Although Ms. Song was on  
23 Sweet People's payroll, she was considered an employee of both Sweet  
24 People and RCRV, and her time was allocated between those two  
25 companies, and a third related entity called Deodar Brands, the proprietor of  
26 the MEK DENIM jeanswear brand. (Salzmann Decl. ¶6, Ex. D (Kim 41:18-  
27 42:1; 58:24-59:3; see also 105:24-106:16); Kim Decl. ¶¶8-9; Choi Decl. ¶8).

1        **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
2        attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
3        at 7-8, 11, 20, 27-28, 47.) Plaintiffs’ evidence does not contradict Phoenix  
4        Fibers’ statement or evidence, for the reasons set forth in the Reply Brief  
5        submitted currently herewith.

6        13. Lilly Kim is the General Counsel for Sweet People and has been since  
7        2010. (Rule 30(b)(6) Deposition of Lilly Kim “Rule 30(b)(6) Depo. (Kim) (App.  
8        Ex. E)” 31:24-32:7.)

9        **Plaintiffs’ Response:** Disputed. Ms. Kim served as the General Counsel of  
10        Sweet People and RCRV from approximately April 2010 to October 2016.  
11        Since that time, Ms. Kim has continued to oversee Plaintiffs’ legal matters  
12        as an outside consultant. (Kim Decl. ¶ 1).

13        **Phoenix Fibers’ Reply:** Plaintiffs’ dispute does not create a genuine dispute  
14        of a material fact that is relevant for summary judgment.

15        14. Felipe Salgado is an employee of Sweet People and began working  
16        for Sweet People in October 2004. (Rule (30)(b)(6) Deposition of Felipe Salgado  
17        (“Rule 30(b)(6) Depo. (Salgado) (App. Ex. F)” 21:20-22:9; 24:1-15.)

18        **Plaintiffs’ Response:** Undisputed. While Mr. Salgado has been on RCRV’s  
19        payroll since 2008, he, like Ms. Song, is considered an employee of both  
20        Sweet People and RCRV, and his time is allocated between those two  
21        companies, as evidenced by his continuing responsibilities relating to the  
22        coordination and shipment of second-quality MISS ME (and ROCK  
23        REVIVAL products) to Phoenix Fibers for destruction. (Salzmann Decl. ¶7,  
24        Ex. E (Salgado 21:20-22; 24:10-15; 31:8-33:21)).

25        **Phoenix Fibers’ Reply:** No reply as this fact is undisputed. However,  
26        Plaintiffs rely wholly on inadmissible evidence. (See Dkt. No. 98 [Def.’s  
27        Objections] at 20, 27-28, 54-56.)  
28

1 **C. Plaintiff RCRV, Inc. (“RCRV”)**

2 15. Mr. Salgado was responsible for merchandise shipping at Sweet  
3 People from 2013 to the present time. (Rule 30(b)(6) Depo. (Salgado) (App. Ex.  
4 F) 21:20-28:15.)

5 **Plaintiffs’ Response:** Disputed. Since October 2013, Mr. Salgado’s only  
6 responsibilities relating to Sweet People’s warehouse logistics were the  
7 coordination and shipment of second-quality MISS ME (and ROCK  
8 REVIVAL products) to Phoenix Fibers for destruction. (Salzmann Decl. ¶7,  
9 Ex. E (Salgado 24:10-15; 31:8-33:21)).

10 **Phoenix Fibers’ Reply:** Plaintiffs rely wholly on inadmissible evidence to  
11 create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections] at 20, 27-28,  
12 54-56.) Moreover, Plaintiffs’ clarification does not create a genuine dispute  
13 of a material fact that is relevant for summary judgment.

14 16. Plaintiff RCRV is a denim and apparel company that was formed in  
15 2007. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 102:22-103:1; Complaint (App.  
16 Ex. H) ¶ 17.)

17 **Plaintiffs’ Response:** Undisputed.

18 **Phoenix Fibers’ Reply:** No reply as this fact is undisputed.

19 17. RCRV sells certain products under its Rock Revival brand name.  
20 (Complaint (App. Ex. H) ¶ 17.)

21 **Plaintiffs’ Response:** Undisputed.

22 **Phoenix Fibers’ Reply:** No reply as this fact is undisputed.

23 18. Rock Revival brand jeans cost a consumer approximately between  
24 \$150 and \$200 at retail. (Maciel Decl. (App. Ex. C) ¶ 37; App Ex. NN.)

25 **Plaintiffs’ Response:** Undisputed.

26 **Phoenix Fibers’ Reply:** No reply as this fact is undisputed.

1           19. In addition to being the General Counsel for Sweet People, Lilly Kim  
2 is also the General Counsel for RCRV and has been since 2010. (Rule 30(b)(6)  
3 Depo. (Kim) (App. Ex. E) 31:24-32:7.)

4           **Plaintiffs' Response:** Disputed. Ms. Kim served as the General Counsel of  
5 Sweet People and RCRV from approximately April 2010 to October 2016.  
6 Since that time, Ms. Kim has continued to oversee Plaintiffs' legal matters  
7 as an outside consultant. (Kim Decl. ¶ 1).

8           **Phoenix Fibers' Reply:** Plaintiffs' dispute does not create a genuine dispute  
9 of a material fact that is relevant for summary judgment.

10           20. In addition to being an employee of Sweet People, Mr. Salgado is an  
11 employee of RCRV and has been since 2008. (Rule 30(b)(6) Depo. (Salgado)  
12 (App. Ex. F) 15:19-22; 18:2-24; 21:20-28:15.) At RCRV, Mr. Salgado oversees  
13 customer service, the shipping department, and the warehouse. (Rule 30(b)(6)  
14 Depo. (Salgado) (App. Ex. F) 17:25-18:24.)

15           **Plaintiffs' Response:** Undisputed. While Mr. Salgado has been on RCRV's  
16 payroll since 2008, he, like Ms. Song, is considered an employee of both  
17 Sweet People and RCRV, and his time is allocated between those two  
18 companies, as evidenced by his continuing responsibilities relating to the  
19 coordination and shipment of second-quality MISS ME (and ROCK  
20 REVIVAL products) to Phoenix Fibers for destruction. (Salzmann Decl. ¶7,  
21 Ex. E (Salgado 21:20-22; 24:10-15; 31:8-33:21)).

22           **Phoenix Fibers' Reply:** No reply as this fact is undisputed. However,  
23 Plaintiffs rely wholly on inadmissible evidence. (See Dkt. No. 98 [Def.'s  
24 Objections] at 20, 26-27, 54-56.)

25           21. Ms. Song was never employed by RCRV. (Song Depo. (App. Ex. D)  
26 18:19-19:16; 21:9-12; App. Ex. P).

27           **Plaintiffs' Response:** Disputed. Lisa Song held the title of Human  
28 Resources Manager at Sweet People between 2009 and February 2014.

(Salzmann Decl. ¶8, Ex. F (Song 21:9-12)). Although Ms. Song was on Sweet People's payroll, she was considered an employee of both Sweet People and RCRV, and her time was allocated between those two companies, and a third related entity called Deodar Brands, the proprietor of the MEK DENIM jeanswear brand. (Salzmann Decl. ¶6, Ex. D (Kim 41:18-42:1; 58:24-59:3; see also 105:24-106:16); Kim Decl. ¶¶8-9; Choi Decl. ¶8). **Phoenix Fibers' Reply:** Plaintiffs rely wholly on inadmissible evidence in attempting to create an alleged dispute. (See Dkt. No. 98 [Def.'s Objections] at 6-8, 11-12, 20, 27-28, 47.) Plaintiffs' evidence does not contradict Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

22. Further, Ms. Song never negotiated any contracts on behalf of RCRV. (Song Depo. (App. Ex. D) 19:19-20:12).

**Plaintiffs' Response:** Disputed. Ms. Song, acting on behalf of Plaintiffs and under the direction of Ms. Kim, entered into an agreement with Phoenix Fibers relating to the donation of second-quality MISS ME and ROCK REVIVAL denim products, which were to solely be destroyed and converted into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 14:1-9); ¶8, Ex. F (Song 24:4-9); Kim Decl. ¶9; Choi Decl. ¶8).

**Phoenix Fibers' Reply:** Plaintiffs rely wholly on inadmissible evidence in attempting to create an alleged dispute. (See Dkt. No. 98 [Def.'s Objections] at 7-8, 11-12, 20, 26-28, 41.) Plaintiffs' evidence does not contradict Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

23. There is no evidence Ms. Song ever represented herself as an employee or agent of RCRV during any conversation that she had with anyone from Phoenix Fibers.

1 **Plaintiffs’ Response:** Disputed. Ms. Song was considered an employee of  
2 both Sweet People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 41:18-42:1;  
3 58:24- 59:3; see also 105:24-106:16); Kim Decl. ¶¶8-9). Ms. Song, acting on  
4 behalf of both Sweet People and RCRV and under the direction of Ms. Kim  
5 (the then- General Counsel of both companies), entered into an agreement  
6 with Phoenix Fibers relating to the donation of both second-quality MISS  
7 ME and ROCK REVIVAL denim products, which were solely to be  
8 destroyed and converted into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim  
9 14:1-9); ¶8, Ex. F (Song 24:4-9); Kim Decl. ¶¶8-9, 15; Choi Decl. ¶8).  
10 Moreover, the parties’ course of conduct between November 2011 and  
11 September 2015—during which time Plaintiffs’ delivered hundreds of  
12 thousands of pounds of ROCK REVIVAL—confirm that RCRV was a  
13 party to the agreement negotiated by Ms. Song, further indicating that she  
14 represented RCRV in the negotiation of the parties’ agreement.

15 **Phoenix Fibers’ Reply:** Plaintiffs wholly on inadmissible evidence in  
16 attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
17 at 7-8, 11-12, 14, 20, 27-28, 41, 47.) Plaintiffs’ evidence does not contradict  
18 Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
19 Brief submitted currently herewith.

20 **D. The Interaction Between Sweet People, RCRV, and Phoenix Fibers**

21 24. Plaintiffs viewed Phoenix Fibers’ website prior to shipping any  
22 clothing to Phoenix Fibers. (Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)

23 **Plaintiffs’ Response:** Disputed. Plaintiffs’ prior statement that “one or more  
24 RCRV and/or Sweet People Apparel, Inc. employee visited the Phoenix  
25 Fibers website” before Plaintiffs delivered any products to Phoenix Fibers  
26 for recycling into shoddy fiber was based on Plaintiffs then-understanding  
27 that Ms. Song had visited the Phoenix Fibers website at or around the time  
28 she was negotiating the terms of the parties’ agreement with Mr. Graham.



Ms. Song, however, recently testified that she has no specific recollection of visiting the Phoenix Fibers website. (Salzmann Decl. ¶8, Ex. F (Song 47:20-48:17)). Moreover, Tod Kean conceded at his deposition that Phoenix Fibers did not have an operational website when the company launched in July 2011, and further testified that he did not know when the Phoenix Fibers website went live, stating that he “would want to check the dates on the [Wayback] machine.” (Salzmann Decl. ¶5, Ex. C (Kean 101:5-25); ¶42, Ex. NN (printouts of Wayback Machine screen capture)). Accordingly, there is no competent evidence that Phoenix Fibers even had an operational website in or around November 2011.

**Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections] at 20, 26-28.) Plaintiffs’ evidence does not contradict Phoenix Fibers’ statement or evidence. Plaintiffs submit no evidence to support their statement that “Plaintiffs’ prior statement that ‘one or more RCRV and/or Sweet People Apparel, Inc. employee visited the Phoenix Fibers website’ before Plaintiffs delivered any products to Phoenix Fibers for recycling into shoddy fiber was based on Plaintiffs then-understanding that Ms. Song had visited the Phoenix Fibers website at or around the time she was negotiating the terms of the parties’ agreement with Mr. Graham.” Plaintiffs point to Phoenix Fibers’ lack of evidence to create a material dispute of fact; however, it is *Plaintiffs’* burden to create a material dispute of fact, not Phoenix Fibers’. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

25. Since its inception, Phoenix Fibers’ website homepage has stated, “Phoenix Fibers collects and recycles textiles in a variety of ways. We maintain a zero waste philosophy whenever feasible. The items we do not use in our shredding process are resold to other recycling companies.” (Kean Decl. (App. Ex. A) ¶ 9; App. Ex. T; Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 166:3-16.)

1       **Plaintiffs’ Response:** Disputed. Phoenix Fibers has produced no evidence  
2       to substantiate Tod Kean’s claim that the phxfibers.com website has been  
3       active “[s]ince [the company’s] inception” in July 2011. (Kean Decl. ¶9).  
4       Tod Kean conceded at his deposition that Phoenix Fibers did not have an  
5       operational website when the company launched in July 2011, and further  
6       testified that he did not know when the Phoenix Fibers website went live,  
7       stating that he “would want to check the dates on the [Wayback] machine.”  
8       (Salzman Decl. ¶5, Ex. C (Kean 101:5-25)). Had Mr. Kean checked the  
9       Wayback Machine, he would have learned that the first screen capture of the  
10      phxfibers.com website is from September 13, 2012, more than a year after  
11      Phoenix Fibers commenced its business. (Salzman Decl. ¶42, Ex. NN  
12      (printouts of Wayback Machine screen capture)). Moreover, Phoenix Fibers  
13      did not “purchase” Plaintiffs’ products, and when Mr. Kean was specifically  
14      asked how this statement—“The items we do not use in our shredding  
15      process are resold to other recycling companies”—which refers to the resale  
16      or reselling of products, related Phoenix Fibers’ sale of Plaintiffs’ products,  
17      Mr. Kean was unable to identify any first or initial “sale” of products by  
18      Plaintiffs that preceded Phoenix Fibers’ “resale.” (Salzman Decl. ¶5, Ex. C  
19      (Kean 102:1-23)).

20      **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence to create an  
21      alleged dispute. (See Dkt. No. 98 [Def.’s Objections] at 20, 26-27.)  
22      Plaintiffs’ evidence does not contradict Phoenix Fibers’ statement or  
23      evidence. Plaintiffs point to Phoenix Fibers’ lack of evidence to create a  
24      material dispute of fact; however, it is *Plaintiffs’* burden to create a material  
25      dispute of fact, not Phoenix Fibers’. *Celotex Corp. v. Catrett*, 477 U.S. 317  
26      (1986).

27      26. Plaintiffs allege that in 2011 they entered into a contract with Phoenix  
28      Fibers (the “Alleged Contract”). (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 14:1-9;

1 18:4-19:3; 28:12-29:7.) The Alleged Contract is not a written contract. (*Id.* at  
2 32:17-34:12; Song Depo. (App. Ex. D) 74:19-75:15; App. Ex. FF.)

3 **Plaintiffs' Response:** Not disputed that there is no single writing consisting  
4 of a written contract between the parties, but disputed to the extent intended  
5 to suggest there are no writings that make reference to any of the terms of  
6 the parties' agreement. In fact, contemporaneous written communications  
7 between the parties memorialize key material terms of the parties'  
8 agreement, including, without limitation, Phoenix Fibers' agreement to shred  
9 (and thereby destroy) all goods donated to it by Plaintiffs:

- 10 • On November 4, 2011, Mr. Graham sent Ms. Song an email  
11 explaining Phoenix Fibers' shredding services, and explaining that  
12 "[i]f necessary, [Phoenix Fibers] can remove the tags, buttons and  
13 zippers. There is no charge for our recycling service." (Salzmann  
14 Decl. ¶16, Ex. N (SP/RCRV005538-5539) (emphasis added)). It  
15 would only be necessary to remove "the tags, buttons and zippers"  
16 from Plaintiffs products if the products were being recycled into  
17 shoddy fiber, as the parties contemplated. (Salzmann Decl. ¶38, Ex. JJ  
18 ("Shredding Clothing Nets Big Rewards for Phoenix Fibers")  
19 (explaining that the first step in the shredding process is "a proprietary  
20 process that removes all buttons, zippers and tags")).
- 21 • On November 15, 2015, two weeks prior to Plaintiffs' delivery of  
22 their first shipment of products to Phoenix Fibers for recycling into  
23 shoddy fiber, Mr. Graham sent an email to Ms. Song explaining  
24 "[t]here's not much else needed. We will receive the material,  
25 schedule it for destruction and away we go! I'll call you this morning  
26 to confirm this email." (Salzmann Decl. ¶18, Ex. P  
27 (SP/RCRV005545) (emphasis added)).  
28

- 1 • December 5, 2011, a week after Plaintiffs delivered their first  
2 shipment of products Phoenix Fibers for recycling into shoddy fiber,  
3 Mr. Graham sent Ms. Song an email explaining what happens to  
4 Plaintiffs' products: "The product we receive may be recycled into  
5 any number of products. This could range from house, automobile or  
6 appliance insulation to prison mattresses.... There is also a certain  
7 portion that cannot be used, such a metal pieces in the buttons and  
8 zippers. These are removed and recycled separately." (Salzmann Decl.  
9 ¶20, Ex. R (SP/RCRV005583- 5584) (emphasis added)).
- 10 • A few months later in March 2012, Mr. Graham reaffirmed this  
11 process in an email to Ms. Song stating: "Phoenix Fibers converts the  
12 jeans into fiber that gets sent to our affiliate company, Bonded Logic  
13 which in turn, manufactures the end products." (Salzmann Decl. ¶24,  
14 Ex. V (SP/RCRV005629) (emphasis added)).
- 15 • Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms.  
16 Song following up on their recent in-person meeting stating: "Some of  
17 our new machinery I told you about has just arrived. Once we have it  
18 set up and running, I will send you a video of us running your jeans."  
19 (Salzmann Decl. ¶27, Ex. Y (SP/RCRV005640) (emphasis added)).

20 **Phoenix Fibers' Reply:** Plaintiffs wholly on inadmissible evidence in  
21 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.'s Objections]  
22 at 21-24, 31-34, 37.) Plaintiffs' evidence does not contradict Phoenix  
23 Fibers' statement or evidence, for the reasons set forth in the Reply Brief  
24 submitted currently herewith.

25 27. Ms. Kim and Plaintiffs allege, but cannot prove, that, pursuant to the  
26 terms of the Alleged Contract, Phoenix Fibers was obligated to recycle all products  
27 donated to Phoenix Fibers by Plaintiffs. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E)  
28 26:1-6; 197:18-25; App. Ex. V-W.) Further, Ms. Kim and Plaintiffs assert, but

1 cannot prove, that Plaintiffs *explicitly* placed a requirement on Phoenix Fibers to  
2 destroy all items that Plaintiffs donated, and that the Alleged Contract required  
3 Phoenix Fibers to destroy all items that Plaintiffs donated. (Rule 30(b)(6) Depo.  
4 (Kim) (App. Ex. E) 26:1-6; 197:18-25; 26:20-29:14; App. Ex. V-W.)

5 **Plaintiffs' Response:** Disputed. Ms. Kim saw written communications  
6 between Ms. Song and Mr. Graham wherein Mr. Graham specifically  
7 represented that Phoenix Fibers would destroy all of Plaintiffs' second-  
8 quality denim products and convert them into shoddy fiber (Salzmann Decl.  
9 ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶¶10-11). As Ms. Kim testified, "[w]e  
10 did require that the items be destroyed and recycled" (Salzmann Decl. ¶6,  
11 Ex. D (Kim 27:20-28:1)). Based on her contemporaneous discussions with  
12 Ms. Song regarding Ms. Song's conversations with Mr. Graham, Ms. Kim  
13 understood that Plaintiffs had conditioned their agreement to provide  
14 Phoenix Fibers with their second-quality MISS ME and ROCK REVIVAL  
15 denim products on Phoenix Fibers' agreement to convert all such products  
16 into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); L. Kim  
17 Decl. ¶¶10-12; *see also* Choi Decl. ¶8). Moreover, the contemporaneous  
18 written communications between the parties memorialize material terms of  
19 the parties' agreement, which include destruction:

- 20 • On November 4, 2011, Mr. Graham sent Ms. Song an email  
21 explaining Phoenix Fibers' shredding services, and explaining that  
22 "[i]f necessary, [Phoenix Fibers] can remove the tags, buttons and  
23 zippers. There is no charge for our recycling service." (Salzmann  
24 Decl. ¶16, Ex. N (SP/RCRV005538-5539) (emphasis added)). It  
25 would only be necessary to remove "the tags, buttons and zippers"  
26 from Plaintiffs products if the products were being recycled into  
27 shoddy fiber, as the parties contemplated. (Salzmann Decl. ¶38, Ex. JJ  
28 ("Shredding Clothing Nets Big Rewards for Phoenix Fibers"))

(explaining that the first step in the shredding process is “a proprietary process that removes all buttons, zippers and tags”)).

- On November 15, 2015, two weeks prior to Plaintiffs’ delivery of their first shipment of products to Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent an email to Ms. Song explaining “[t]here’s not much else needed. We will receive the material, schedule it for destruction and away we go! I’ll call you this morning to confirm this email.” (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).
- December 5, 2011, a week after Plaintiffs delivered their first shipment of products Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent Ms. Song an email explaining what happens to Plaintiffs’ products: “The product we receive may be recycled into any number of products. This could range from house, automobile or appliance insulation to prison mattresses.... There is also a certain portion that cannot be used, such a metal pieces in the buttons and zippers. These are removed and recycled separately.” (Salzmann Decl. ¶20, Ex. R (SP/RCRV005583- 5584) (emphasis added)).
- A few months later in March 2012, Mr. Graham reaffirmed this process in an email to Ms. Song stating: “Phoenix Fibers converts the jeans into fiber that gets sent to our affiliate company, Bonded Logic which in turn, manufactures the end products.” (Salzmann Decl. ¶24, Ex. V (SP/RCRV005629) (emphasis added)).
- Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms. Song following up on their recent in-person meeting stating: “Some of our new machinery I told you about has just arrived. Once we have it set up and running, I will send you a video of us running your jeans.” (Salzmann Decl. ¶27, Ex. Y (SP/RCRV005640) (emphasis added)).



1        **Phoenix Fibers' Reply:** Plaintiffs wholly on inadmissible evidence in  
2        attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections]  
3        at 7-8, 12-13, 20-24, 27, 30-34, 37, 43-44.) Plaintiffs' evidence does not  
4        contradict Phoenix Fibers' statement or evidence, for the reasons set forth in  
5        the Reply Brief submitted currently herewith.

6        28. Plaintiffs' 30(b)(6) witness regarding negotiation of, and entry into,  
7        the Alleged Contract testified that the Alleged Contract was negotiated and entered  
8        into by the human resource manager, Ms. Song, on behalf of Plaintiffs, as opposed  
9        to Ms. Kim, Plaintiffs' General Counsel or anyone else. (Rule 30(b)(6) Depo.  
10       (Kim) (App. Ex. E) 14:1-9; 18:4-19:15; 31:24-32:7; 175:25-176:3.) Plaintiffs'  
11       30(b)(6) witness further testified that Ms. Song negotiated the Alleged Contract  
12       with Mr. Graham and then entered into the Alleged Contract with Mr. Graham, a  
13       representative of Phoenix Fibers. (*Id.* at 14:1-9; 18:4-19:3; 28:12-29:4.)

14       **Plaintiffs' Response:** Disputed. Ms. Song, acting on behalf of Plaintiffs and  
15       under the direction of Ms. Kim, entered into an agreement with Phoenix  
16       Fibers relating to the donation of second-quality MISS ME and ROCK  
17       REVIVAL denim products, which were all to be destroyed and converted  
18       into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 14:1-9); ¶8, Ex. F (Song  
19       24:4-9); Kim Decl. ¶¶8-12). Eric Choi, Plaintiffs' then-CEO approved the  
20       terms of the parties' agreement. (Choi Decl. ¶ 8).

21       **Phoenix Fibers' Reply:** Plaintiffs on inadmissible evidence in attempting to  
22       create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections] at 7-8, 11-  
23       13, 20, 27-28, 41.) Plaintiffs' evidence does not contradict Phoenix Fibers'  
24       statement or evidence, for the reasons set forth in the Reply Brief submitted  
25       currently herewith.

26       29. To the extent there is a contract, the Alleged Contract was entered into  
27       prior to November 7, 2011. (Song Depo. (App. Ex. D) 57:14-60:3; 62:8-17; 82:17-  
28       83:7; Maciel Decl. (App. Ex. C) ¶ 28; App. Ex. EE).

1        **Plaintiffs’ Response:** Disputed. The parties’ agreement was finalized prior  
2        to the first delivery of denim products to Phoenix Fibers for recycling into  
3        shoddy fiber on November 29, 2011. Phoenix Fibers is desperately  
4        attempting to ignore Mr. Graham’s November 15, 2015 email to Ms. Song—  
5        two weeks prior to Plaintiffs’ delivery of their first shipment of products to  
6        Phoenix Fibers for recycling into shoddy fiber—in which Mr. Graham states  
7        “[t]here’s not much else needed. We will receive the material, schedule it for  
8        destruction and away we go! I’ll call you this morning to confirm this  
9        email.” (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).  
10       Further, try as it may, even if the parties’ agreement had been reached on  
11       November 7, 2011, Mr. Graham’s November 15, 2011 email merely serves  
12       to confirm that which the parties had already agreed to—that Phoenix Fibers  
13       would only recycle Plaintiffs’ products into shoddy fiber.

14       **Phoenix Fibers’ Reply:** Plaintiffs wholly on inadmissible evidence in  
15       attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
16       at 21-22, 31.) Plaintiffs’ evidence does not contradict Phoenix Fibers’  
17       statement or evidence, for the reasons set forth in the Reply Brief submitted  
18       currently herewith.

19       30. Plaintiffs have no evidence that Ms. Kim, the General Counsel, has  
20       any personal knowledge of the formation of, or terms of, the Alleged Contract.

21       **Plaintiffs’ Response:** Undisputed. Throughout her discussions with Phoenix  
22       Fibers, Ms. Song reported back to Ms. Kim, Mr. Choi and Steve Kim,  
23       Plaintiffs’ then-COO, her superiors who also worked for both Sweet People  
24       and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24; 20:1-11; 20:25-21:3;  
25       43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N  
26       (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim Decl.  
27       ¶9; Choi Decl. ¶8). Moreover, Ms. Kim saw written communications  
28       between Ms. Song and Mr. Graham wherein Mr. Graham specifically

1 represented that Phoenix Fibers would only destroy Plaintiffs' second-  
2 quality denim products and convert them into shoddy fiber (Salzmann Decl.  
3 ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that "[w]e did  
4 require that the items be destroyed and recycled" (Salzmann Decl. ¶6, Ex. D  
5 (Kim 27:20-28:1)). Based on her contemporaneous discussions with Ms.  
6 Song regarding Ms. Song's negotiations with Mr. Graham, Ms. Kim  
7 understood that Plaintiffs had conditioned their agreement to provide  
8 Phoenix Fibers with their second-quality MISS ME and ROCK REVIVAL  
9 denim products on Phoenix Fibers' agreement to convert all such products  
10 into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); Kim Decl.  
11 ¶10; *see also* Choi Decl. ¶8).

12 **Phoenix Fibers' Reply:** No reply as this fact is undisputed. However,  
13 Plaintiffs rely on inadmissible evidence. (*See* Dkt. No. 98 [Def.'s  
14 Objections] at 7-8, 11-13, 20-21, 27, 30-31, 41-44.)

15 31. Ms. Kim did not have any communications of any kind with anyone  
16 from Phoenix Fibers until 2015, years after the alleged formation of the Alleged  
17 Contract. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 19:4-15; 31:24-32:7.)

18 **Plaintiffs' Response:** Disputed to the following extent. While Ms. Kim did  
19 not have any such direct communications until 2015, throughout her  
20 discussions with Phoenix Fibers, Ms. Song reported back to Ms. Kim, Mr.  
21 Choi and Steve Kim, Plaintiffs' then-COO, her superiors who also worked  
22 for both Sweet People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24;  
23 20:1-11; 20:25- 21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16,  
24 Ex. N (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim  
25 Decl. ¶9; Choi Decl. ¶8). Moreover, Ms. Kim saw written communications  
26 between Ms. Song and Mr. Graham wherein Mr. Graham represented that  
27 Phoenix Fibers would destroy Plaintiffs' second-quality denim products and  
28 convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25);

1 Kim Decl. ¶11), and testified that “[w]e did require that the items be  
2 destroyed and recycled” (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)).  
3 Based on her contemporaneous discussions with Ms. Song regarding Ms.  
4 Song’s negotiations with Mr. Graham, Ms. Kim understood that Plaintiffs  
5 had conditioned their agreement to provide Phoenix Fibers with their  
6 second-quality MISS ME and ROCK REVIVAL denim products only based  
7 on Phoenix Fibers’ agreement to convert all such products into shoddy fiber.  
8 (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); Kim Decl. ¶10; *see also* Choi  
9 Decl. ¶8). In addition, based on her contemporaneous understanding of Ms.  
10 Song’s oral and written communications with Phoenix Fibers, namely, Mr.  
11 Graham’s representation that Phoenix Fibers would “destroy” Plaintiffs’  
12 products and convert them into shoddy fiber, and his statement that Phoenix  
13 Fibers did not require a writing to memorialize the parties’ understanding,  
14 Ms. Kim was satisfied that a written agreement with Phoenix Fibers was not  
15 necessary. (Salzmann Decl. ¶6, Ex. D (Kim 34:4-12; 37:22-38:10); Kim  
16 Decl. ¶12).

17 **Phoenix Fibers’ Reply:** Plaintiffs on inadmissible evidence in attempting to  
18 create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections] at 7-8, 11-  
19 13, 20-21, 27, 30-31, 41-46.) Plaintiffs’ evidence does not contradict  
20 Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
21 Brief submitted currently herewith.

22 32. Ms. Kim never spoke to or communicated with Mr. Graham about  
23 anything. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 19:4-15; 175:25-176:3.)

24 **Plaintiffs’ Response:** Disputed to the following extent. While Ms. Kim did  
25 not have any direct communications with Mr. Graham, throughout her  
26 discussions with Phoenix Fibers, Ms. Song reported back to Ms. Kim, Mr.  
27 Choi and Steve Kim, Plaintiffs’ then-COO, her superiors who also worked  
28 for both Sweet People and RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24;

20:1-11; 20:25- 21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim Decl. ¶9; Choi Decl. ¶8). Moreover, Ms. Kim saw written communications between Ms. Song and Mr. Graham wherein Mr. Graham represented that Phoenix Fibers would destroy Plaintiffs’ second-quality denim products and convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that “[w]e did require that the items be destroyed and recycled” (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)). Based on her contemporaneous discussions with Ms. Song regarding Ms. Song’s negotiations with Mr. Graham, Ms. Kim understood that Plaintiffs had conditioned their agreement to provide Phoenix Fibers with their second-quality MISS ME and ROCK REVIVAL denim products only based on Phoenix Fibers’ agreement to convert all such products into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 28:14-29:4); Kim Decl. ¶10; *see also* Choi Decl. ¶8). In addition, based on her contemporaneous understanding of Ms. Song’s oral and written communications with Phoenix Fibers, namely, Mr. Graham’s representation that Phoenix Fibers would “destroy” Plaintiffs’ products and convert them into shoddy fiber, and his statement that Phoenix Fibers did not require a writing to memorialize the parties’ understanding, Ms. Kim was satisfied that a written agreement with Phoenix Fibers was not necessary. (Salzmann Decl. ¶6, Ex. D (Kim 34:4-12; 37:22-38:10); Kim Decl. ¶12).

**Phoenix Fibers’ Reply:** Plaintiffs wholly on inadmissible evidence in attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections] at 7-8, 11-13, 20-21, 27, 30-31, 41-46.) Plaintiffs’ evidence does not contradict Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

33. Plaintiffs have no evidence that Mr. Salgado has personal knowledge of the terms of the Alleged Contract between Phoenix Fibers.

**Plaintiffs' Response:** Undisputed.

**Phoenix Fibers' Reply:** No reply as this fact is undisputed.

34. Mr. Salgado does not remember ever speaking to former Phoenix Fibers employee, Mr. Graham. (Rule 30(b)(6) Depo. (Salgado) (App. Ex. F) 71:1-72:4). Mr. Salgado never spoke to current Phoenix Fibers employee Mr. Johnson about any obligations between Phoenix Fibers and Plaintiffs. (*Id.* at 73:19-74:2.)

**Plaintiffs' Response:** Disputed to the following extent. While he did not

have any such direct communications, Mr. Salgado understood that Plaintiffs' products were delivered to Phoenix Fibers for destruction.

(Salzmann Decl. ¶7, Ex. E (Salgado 31:8-25; 35:16-25; 99:14-19)).

Moreover, Mr. Johnson's communications with Mr. Salgado confirmed that Phoenix Fibers was destroying Plaintiffs' products. Indeed, on September 11, 2015, Mr. Johnson wrote the following to Mr. Salgado: "The last 3 loads have been mostly Miss Me, due to the high metal content we 'salt' Miss me into our blend. This insures that we do not over burden our metal counter measures. The Rocks [Revivals] have significantly less metal & we can destroy / convert those quickly." (Salzmann Decl. ¶28, Ex. Z (SP/RCRV001006-1009) (emphasis added)).

**Phoenix Fibers' Reply:** Plaintiffs wholly on inadmissible evidence in attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections] at 20, 23, 27-28, 34, 54-56.) Plaintiffs' evidence does not contradict Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

35. No one ever told Mr. Salgado that there was a contract between Plaintiffs and Phoenix Fibers. (Rule 30(b)(6) Depo. (Salgado)(App. Ex. F) 90:5-12.)



1       **Plaintiffs’ Response:** Disputed to the following extent. While he did not  
2       have any such direct communication, Mr. Salgado understood that Plaintiffs’  
3       products were delivered to Phoenix Fibers for destruction. (Salzmann Decl.  
4       ¶7, Ex. E (Salgado 31:8-25; 35:16-25; 99:14-19)). Moreover, Mr. Johnson’s  
5       communications with Mr. Salgado confirmed that Phoenix Fibers was  
6       destroying Plaintiffs’ products. Indeed, on September 11, 2015, Mr. Johnson  
7       wrote the following to Mr. Salgado: “The last 3 loads have been mostly Miss  
8       Me, due to the high metal content we ‘salt’ Miss me into our blend. This  
9       insures that we do not over burden our metal counter measures. The Rocks  
10      [Revivals] have significantly less metal & we can destroy / convert those  
11      quickly.” (Salzmann Decl. ¶28, Ex. Z (SP/RCRV001006-1009) (emphasis  
12      added)).

13      **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence to create an  
14      alleged dispute. (See Dkt. No. 98 [Def.’s Objections] at 20, 23, 27-28, 34,  
15      54-56.) Plaintiffs’ evidence does not contradict Phoenix Fibers’ statement or  
16      evidence.

17      36. Ms. Song, the only person who spoke to Phoenix Fibers regarding the  
18      Alleged Contract, cannot recall whether any part of the Alleged Contract was  
19      based on conversations she had with Phoenix Fibers. (Song Depo. (App. Ex. D)  
20      61:21-62:1.)

21      **Plaintiffs’ Response:** Disputed. Ms. Song’s testimony was: “I can’t recall  
22      the origins of what I recall, whether it was a phone [call] or a[n] e-mail.”  
23      (Salzmann Decl. ¶8, Ex. F (Song 61:12-19; *see also* 35:13-18; 72:20-73:2)).  
24      In fact, Ms. Song testified at length that the parties’ agreement was based in  
25      significant part on conversations and negotiations she had with Mr. Graham.  
26      (Salzmann Decl. ¶8, Ex. F (Song 31:8-24; 32:14-33:1; 33:9-17)).

27      **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
28      attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]

1 at 20, 28.) Plaintiffs' evidence does not contradict Phoenix Fibers'  
2 statement or evidence, for the reasons set forth in the Reply Brief submitted  
3 currently herewith.

4 37. Plaintiffs do not know if, and cannot prove that, during verbal  
5 discussions, Ms. Song ever required Plaintiffs to destroy all items that they donated  
6 to Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-16;  
7 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5-  
8 52:3; 52:11-17; Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)

9 **Plaintiffs' Response:** Disputed. Phoenix Fibers mischaracterizes Ms.  
10 Song's testimony. In the portion referred to, Ms. Song's testimony was: "I  
11 can't recall the origins of what I recall, whether it was a phone [call] or a[n]  
12 e-mail." (Salzmann Decl. ¶8, Ex. F (Song 61:12-19; see also 35:13-18;  
13 72:20-73:2)). In fact, Ms. Song testified at length that the parties' agreement  
14 was based in significant part on conversations and negotiations she had with  
15 Mr. Graham. Salzmann Decl. ¶8, Ex. F (Song 31:8-24; 32:14-33:1; 33:9-  
16 17)). Further, Ms. Song has a clear recollection and understanding that  
17 Phoenix Fibers agreed to shred (i.e., destroy) all of Plaintiffs' products into  
18 shoddy fiber. (Salzmann Decl. ¶8, Ex. F (Song 67:11-24; 28:10-29:3)).  
19 Moreover, contemporaneous written communications between the parties  
20 memorialize key material terms of the parties' agreement, including, without  
21 limitation, Phoenix Fibers' agreement to shred (and thereby destroy) all  
22 goods donated to it by Plaintiffs. (Salzmann Decl. ¶16, Ex. N  
23 (SP/RCRV005538-5539); ¶18, Ex. P (SP/RCRV005545); ¶20, Ex. R  
24 (SP/RCRV005583-5584); ¶24, Ex. V (SP/RCRV005629); ¶27, Ex. Y  
25 (SP/RCRV005640)).

26 **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
27 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.'s Objections]  
28 at 20-23, 28, 31-34, 56-57.) Plaintiffs' evidence does not contradict Phoenix

1       Fibers' statement or evidence, for the reasons set forth in the Reply Brief  
2       submitted currently herewith.

3       38.   Ms. Song does not recall any oral communications in which she  
4       required Plaintiffs to destroy all the items that they donated to Phoenix Fibers.  
5       (Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5-52:3; 52:11-17.)

6       **Plaintiffs' Response:** Disputed. Phoenix Fibers mischaracterizes Ms.  
7       Song's testimony. In the portion referred to, Ms. Song's testimony was: "I  
8       can't recall the origins of what I recall, whether it was a phone [call] or a[n]  
9       e-mail." (Salzmann Decl. ¶8, Ex. F (Song 61:12-19; *see also* 35:13-18;  
10      72:20-73:2)). In fact, Ms. Song testified at length that the parties' agreement  
11      was based in significant part on conversations and negotiations she had with  
12      Mr. Graham. Salzmann Decl. ¶8, Ex. F (Song 31:8-24; 32:14-33:1; 33:9-  
13      17)). Further, Ms. Song has a clear recollection and understanding that  
14      Phoenix Fibers agreed to shred (i.e., destroy) all of Plaintiffs' products into  
15      shoddy fiber. (Salzmann Decl. ¶8, Ex. F (Song 67:11-24; 28:10-29:3)).  
16      Moreover, contemporaneous written communications between the parties  
17      memorialize key material terms of the parties' agreement, including, without  
18      limitation, Phoenix Fibers' agreement to shred (and thereby destroy) all  
19      goods donated to it by Plaintiffs. (Salzmann Decl. ¶16, Ex. N  
20      (SP/RCRV005538-5539); ¶18, Ex. P (SP/RCRV005545); ¶20, Ex. R  
21      (SP/RCRV005583-5584); ¶24, Ex. V (SP/RCRV005629); ¶27, Ex. Y  
22      (SP/RCRV005640)).

23      **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
24      attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections]  
25      at 20-23, 28, 31-34, 56-57.) Plaintiffs' evidence does not contradict Phoenix  
26      Fibers' statement or evidence, for the reasons set forth in the Reply Brief  
27      submitted currently herewith.

39. Further, despite Ms. Kim's belief, Plaintiffs do not know if, and cannot prove that, during verbal discussions, Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-16; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5-52:3; 52:11-17; Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.) Nor have Plaintiffs provided evidence that Phoenix Fibers ever agreed to destroy every shipment of materials Plaintiffs provided them. (*See id.*)

**Plaintiffs' Response:** Disputed. Ms. Kim testified that she saw written communications between Ms. Song and Mr. Graham wherein Mr. Graham represented that Phoenix Fibers would destroy Plaintiffs' second-quality denim products and convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that "[w]e did require that the items be destroyed and recycled" (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)). Further, contemporaneous written communications between the parties memorialize key material terms of the parties' agreement, including, without limitation, Phoenix Fibers' agreement to shred (and thereby destroy) all goods donated to it by Plaintiffs:

- On November 4, 2011, Mr. Graham sent Ms. Song an email explaining Phoenix Fibers' shredding services, and explaining that "[i]f necessary, [Phoenix Fibers] can remove the tags, buttons and zippers. There is no charge for our recycling service." (Salzmann Decl. ¶16, Ex. N (SP/RCRV005538-5539) (emphasis added)). It would only be necessary to remove "the tags, buttons and zippers" from Plaintiffs products if the products were being recycled into shoddy fiber, as the parties contemplated. (Salzmann Decl. ¶38, Ex. JJ ("Shredding Clothing Nets Big Rewards for Phoenix Fibers"))

(explaining that the first step in the shredding process is “a proprietary process that removes all buttons, zippers and tags”)).

- On November 15, 2015, two weeks prior to Plaintiffs’ delivery of their first shipment of products to Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent an email to Ms. Song explaining “[t]here’s not much else needed. We will receive the material, schedule it for destruction and away we go! I’ll call you this morning to confirm this email.” (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).
- December 5, 2011, a week after Plaintiffs delivered their first shipment of products Phoenix Fibers for recycling into shoddy fiber, Mr. Graham sent Ms. Song an email explaining what happens to Plaintiffs’ products: “The product we receive may be recycled into any number of products. This could range from house, automobile or appliance insulation to prison mattresses.... There is also a certain portion that cannot be used, such a metal pieces in the buttons and zippers. These are removed and recycled separately.” (Salzmann Decl. ¶20, Ex. R (SP/RCRV005583- 5584) (emphasis added)).
- A few months later in March 2012, Mr. Graham reaffirmed this process in an email to Ms. Song stating: “Phoenix Fibers converts the jeans into fiber that gets sent to our affiliate company, Bonded Logic which in turn, manufactures the end products.” (Salzmann Decl. ¶24, Ex. V (SP/RCRV005629) (emphasis added)).
- Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms. Song following up on their recent in-person meeting stating: “Some of our new machinery I told you about has just arrived. Once we have it set up and running, I will send you a video of us running your jeans.” (Salzmann Decl. ¶27, Ex. Y (SP/RCRV005640) (emphasis added)).

1        **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
2        attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
3        at 7-8, 12-13, 20-24, 27, 30-34, 37, 43-44.) Plaintiffs’ evidence does not  
4        contradict Phoenix Fibers’ statement or evidence, for the reasons set forth in  
5        the Reply Brief submitted currently herewith.

6        40. Plaintiffs’ 30(b)(6) witness admitted: “I don’t know if the word  
7        ‘destroyed’ was used in the verbal discussions” between Ms. Song and Mr.  
8        Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.)

9        **Plaintiffs’ Response:** Disputed to the following extent. While Ms. Kim so  
10       testified, she saw written communications between Ms. Song and Mr.  
11       Graham wherein Mr. Graham represented that Phoenix Fibers would destroy  
12       Plaintiffs’ second-quality denim products and convert them into shoddy fiber  
13       (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified  
14       that “[w]e did require that the items be destroyed and recycled” (Salzmann  
15       Decl. ¶6, Ex. D (Kim 27:20-28:1)).

16       **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
17       attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
18       at 13, 20, 27, 43-44.) Plaintiffs’ evidence does not contradict Phoenix  
19       Fibers’ statement or evidence, for the reasons set forth in the Reply Brief  
20       submitted currently herewith.

21       41. Plaintiffs allege that Ms. Song reported to Ms. Kim with respect to the  
22       negotiations and entry into the Alleged Contract between Plaintiffs and Phoenix  
23       Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 14:4-9; 18:4-19:15; 24:17-25:4;  
24       28:12-29:14; Song Depo. (App. Ex. D) 27:9-15.)

25       **Plaintiffs’ Response:** Disputed as to the reference to an “Alleged Contract.”  
26       Otherwise undisputed, as throughout her discussions with Phoenix Fibers,  
27       Ms. Song reported back to Ms. Kim, Mr. Choi and Steve Kim, Plaintiffs’  
28       then-COO, her superiors who also worked for both Sweet People and



RCRV. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24; 20:1-11; 20:25-21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim Decl. ¶9; Choi Decl. ¶8) **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in attempting to create an alleged dispute. (See Dkt. No. 98 [Def.'s Objections] at 7-8, 11-13, 20-21, 27, 30-31, 41-44.) Plaintiffs' evidence does not contradict Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

42. Despite reporting to Ms. Kim with respect to the negotiations between Sweet People and Phoenix Fibers and the alleged formation of the Alleged Contract, Ms. Song never reported to Ms. Kim that the Alleged Contract contained an explicit requirement on Phoenix Fibers to destroy all items that Plaintiffs donated to Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-19; 28:12-29:14.)

**Plaintiffs' Response:** Disputed. Throughout her discussions with Phoenix Fibers, Ms. Song reported back to Ms. Kim, Mr. Choi and Steve Kim, Plaintiffs' then-COO, her superiors who also worked for both Sweet People and RCRV that the agreement between the parties required Phoenix Fibers to destroy all items that Plaintiffs donated to Phoenix Fibers. (Salzmann Decl. ¶6, Ex. D (Kim 18:4-24; 20:1-11; 20:25-21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-5533), ¶16, Ex. N (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543); Kim Decl. ¶9; Choi Decl. ¶8). Moreover, Ms. Kim saw written communications between Ms. Song and Mr. Graham wherein Mr. Graham represented that Phoenix Fibers would destroy Plaintiffs' second-quality denim products and convert them into shoddy fiber (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that "[w]e did require that the items be destroyed and recycled" (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:1)). Based on her contemporaneous

1 discussions with Ms. Song regarding Ms. Song's negotiations with Mr.  
2 Graham, Ms. Kim understood that Plaintiffs had conditioned their agreement  
3 to provide Phoenix Fibers with their second-quality MISS ME and ROCK  
4 REVIVAL denim products only based on Phoenix Fibers' agreement to  
5 convert all such products into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim  
6 28:14-29:4); Kim Decl. ¶10; *see also* Choi Decl. ¶8).

7 **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
8 attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections]  
9 at 7-8, 11-13, 20-21, 27, 30-31, 41-44.) Plaintiffs' evidence does not  
10 contradict Phoenix Fibers' statement or evidence, for the reasons set forth in  
11 the Reply Brief submitted currently herewith.

12 43. Prior to October 27, 2015, Plaintiffs never verbally or electronically  
13 told Phoenix Fibers that reselling the products donated to Phoenix Fibers by  
14 Plaintiffs was prohibited. (Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)

15 **Plaintiffs' Response:** Disputed to the following extent. While no such  
16 communication took place prior to October 27, 2015, Plaintiffs had no  
17 reason to believe that Phoenix Fibers had violated the terms of the parties'  
18 agreement that Phoenix Fibers would only shred all products donated to it by  
19 Plaintiffs, and had resold any such products, prior to that date.

20 **Phoenix Fibers' Reply:** Plaintiffs present no evidence to create a dispute.  
21 Plaintiffs were aware of Phoenix Fibers' certified destruction program.  
22 (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 167:21-168:24; 169:12-170:3;  
23 Maciel Decl. (App. Ex. C) ¶ 18; App. Ex. U.) Plaintiffs did not require any  
24 certification from Phoenix Fibers confirming that the items Plaintiffs  
25 donated to Phoenix Fibers had been destroyed. (Rule 30(b)(6) Depo. (Kim)  
26 (App. Ex. E) 34:13-21; Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)  
27 Plaintiffs never paid Phoenix Fibers to destroy the items that Plaintiffs  
28 donated to Phoenix Fibers. (Johnson Decl. (App. Ex. B) ¶ 7.)

1           44. Plaintiffs were aware of Phoenix Fibers’ certified destruction  
2 program. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 167:21-168:24; 169:12-170:3;  
3 Maciel Decl. (App. Ex. C) ¶ 18; App. Ex. U.) Plaintiffs did not require any  
4 certification from Phoenix Fibers confirming that the items Plaintiffs donated to  
5 Phoenix Fibers had been destroyed. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E)  
6 34:13-21; Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.) Plaintiffs never  
7 paid Phoenix Fibers to destroy the items that Plaintiffs donated to Phoenix Fibers.  
8 (Johnson Decl. (App. Ex. B) ¶ 7.)

9           **Plaintiffs’ Response:** Disputed as to the existence and Plaintiffs’ purported  
10 awareness of Phoenix Fibers’ “certified destruction program” at the time the  
11 parties’ agreement was entered into in November 2011. As a result,  
12 Plaintiffs did not believe it was necessary to request certificates of  
13 destruction from Phoenix Fibers for the second-quality goods they had  
14 donated to Phoenix Fibers for that purpose, because they “assumed that the  
15 goods were being recycled [into shoddy fiber] as [they] were told they  
16 were.” (Salzmann Decl. ¶6, Ex. D (Kim 168:12-19; 26:23-28:5; 39:5-22);  
17 Kim Decl. ¶13). As Mr. Graham advised Ms. Song, “We will receive the  
18 material, schedule it for destruction and away we go!” (Salzmann Decl. ¶18,  
19 Ex. P (SP/RCRV005545) (emphasis added)).

20           **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
21 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
22 at 13, 20, 27, 43-44, 46-47, 54.) Plaintiffs’ evidence does not contradict  
23 Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
24 Brief submitted currently herewith.

25           45. Prior to October 2015, Plaintiffs never sought confirmation that any  
26 products it had donated to Phoenix Fibers had been destroyed. (Maciel Decl.  
27 (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)  
28

1        **Plaintiffs’ Response:** Disputed to the following extent. Prior to October  
2        2015, Plaintiffs had no reason to believe it was necessary to request  
3        continual confirmation of destruction from Phoenix Fibers, because they  
4        assumed Phoenix Fibers was adhering to its agreement to destroy all such  
5        products. In particular, Plaintiffs “assumed that the goods were being  
6        recycled [into shoddy fiber] as [they] were told they were.” (Salzmann Decl.  
7        ¶6, Ex. D (Kim 168:12-19; 26:23-28:5; 39:5-22); Kim Decl. ¶13; Choi Decl.  
8        ¶¶10-11).

9        **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
10       attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
11       at 8-9, 13, 20, 27, 43-44, 46-47, 54.) Plaintiffs’ evidence does not contradict  
12       Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
13       Brief submitted currently herewith.

14       46. Plaintiffs assert that they believed that recycling was synonymous  
15       with “destroying” in the context of clothing. (Rule 30(b)(6) Depo. (Kim) (App.  
16       Ex. E) 27:20-28:5; 39:5-12; 197:18-25; 198:23-199:12.)

17       **Plaintiffs’ Response:** Disputed. Plaintiffs believed—and correctly so—that  
18       recycling denim products into shoddy fiber, which is what Phoenix Fibers  
19       agreed to do with respect to all such products donated to it by Plaintiffs,  
20       required destruction. (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:5; 39:5-22);  
21       Kim Decl. ¶13). As Ms. Kim testified: “we believed that during the  
22       recycling process, the items would naturally be destroyed as they were made  
23       into shoddy fiber.” (Salzmann Decl. ¶6, Ex. D (Kim 28:2-4)).

24       **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
25       attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
26       at 13, 20, 27, 43-44, 46-47.) Plaintiffs’ evidence does not contradict  
27       Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
28       Brief submitted currently herewith.

1           47. Ms. Song never formed a specific agreement with Phoenix Fibers, she  
2 merely had an understanding of what Phoenix Fibers did. (Song Depo. (App. Ex.  
3 D) 62:19-63:16.)

4           **Plaintiffs' Response:** Disputed. In fact, Ms. Song believed that Plaintiffs  
5 had formed such an agreement with Phoenix Fibers. When asked at her  
6 deposition for her "understanding of the agreement at the time that that first  
7 shipment went to Phoenix Fibers," Ms. Song stated:

8                   My understanding was that we would send the inventory that  
9 we needed to -- that we wanted to use as part of our -- one of  
10 our green initiative programs. Phoenix Fibers would break  
11 down the inventory sent to them, shred it and create  
12 insulation that they would pass along to Bonded Logic, who  
13 insulated houses in need. (Salzmann Decl. ¶8, Ex. F (Song  
14 67:11-24 (emphasis added); *see also* 28:10-29:3)).

15 Moreover, Ms. Song testified as follows:

16                   Q. Do you have an understanding that prior to that first  
17 shipment of goods from Sweet People to Phoenix Fibers, that  
18 there was an agreement between Sweet People and Phoenix  
19 Fibers?

20                   [Objections]

21                   A. Yes, I believe that there was an understanding.

22                   Q. And you understand -- Strike that. So it's your  
23 understanding that that agreement -- Strike that.

24                   You said you believe there was an understanding.

25                   Did you un- -- Did you believe that that understanding was  
26 an agreement?

27                   [Objections]

28                   A. Yes. (Salzmann Decl. ¶8, Ex. F (Song 59:7-60:3)).

1        **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
2        attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
3        at 20, 28, 56-57.) Plaintiffs’ evidence does not contradict Phoenix Fibers’  
4        statement or evidence, for the reasons set forth in the Reply Brief submitted  
5        currently herewith.

6        48. Ms. Song’s understanding of what Phoenix Fibers did was based, in  
7        part, on conversations with a third party and the information she viewed on a third-  
8        party website. (Song Depo. (App. Ex. D) 43:23-48:17.)

9        **Plaintiffs’ Response:** Disputed, with respect to the contention that “Ms.  
10        Song’s understanding of what Phoenix Fibers did was based, in part, on  
11        conversations with a third party...,” as no such conversations are identified  
12        in the citation list above. Moreover, Plaintiffs dispute the characterization of  
13        Phoenix Fibers’ commonly-owned affiliate, Bonded Logic, as a “third  
14        party.” Phoenix Fibers and Bonded Logic are affiliated companies owned by  
15        the Kean family. (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets  
16        Big Rewards for Phoenix Fibers”); ¶39, Ex. KK (“Chandler firm grows;  
17        recycles denim material into insulation”)). Tod Kean is the President and  
18        CEO of Phoenix Fibers, and the Secretary and Co-founder of Bonded Logic.  
19        (Salzmann Decl. ¶5, Ex. C (Kean 58:11-16)). In fact, “Phoenix Fibers was  
20        founded to provide a stable source of raw material for Bonded Logic’s  
21        business of manufacturing denim cloth-based insulation under the name  
22        UltraTouch Denim.” (Salzmann Decl. ¶38, Ex. JJ (“Shredding Clothing Nets  
23        Big Rewards for Phoenix Fibers”)).

24        **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
25        attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
26        at 20, 24-27, 37.) Plaintiffs’ evidence does not contradict Phoenix Fibers’  
27        statement or evidence, for the reasons set forth in the Reply Brief submitted  
28        currently herewith.



49. Plaintiffs assert that subsequent to the formation of the Alleged Contract, Plaintiffs and Phoenix Fibers entered a series of other contracts, the terms of which pertained only to the shipment of the products that Plaintiffs would donate to Phoenix Fibers pursuant to the Alleged Contract (the “Shipment Contracts”). (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 15:1-16:6; 16:21-17:7; 17:14-18:3; Song Depo. (App. Ex. D) 55:13-56:13.)

**Plaintiffs’ Response:** Disputed to the extent it is suggested that the terms of the “Shipment Contracts” in any way entitled Phoenix Fibers to depart from the terms of the so-called “Alleged Contract,” otherwise undisputed.

**Phoenix Fibers’ Reply:** Plaintiffs present no evidence to create an alleged dispute.

50. Despite the Shipment Contracts, the terms of the Alleged Contract initially entered into by Ms. Song never changed. (Song Depo. (App. Ex. D) 86:8-15.)

**Plaintiffs’ Response:** Disputed to the extent it is suggested that the terms of the “Shipment Contracts” in any way entitled Phoenix Fibers to depart from the terms of the so-called “Alleged Contract,” otherwise undisputed.

Plaintiffs further state that they donated MISS ME and ROCK REVIVAL products to Phoenix Fibers pursuant to the terms of parties’ November 2011 agreement— namely, (a) Plaintiffs would deliver unfinished, damaged and otherwise secondquality MISS ME and ROCK REVIVAL denim products to Phoenix Fibers’ Chandler, Arizona facility, at no cost to Phoenix Fibers, and (b) Phoenix Fibers would shred all such products into shoddy fiber, which would then be used by Phoenix Fibers’ affiliate, Bonded Logic, to manufacture environmentally friendly products such as insulation. (Salzmann Decl. ¶8, Ex. F (Song 28:10- 29:3; 58:4-60:3; 64:3-8; 65:21-66:3; 67:11-24; 77:3-24; 85:11-86:1); ¶6, Ex. D (Kim 34:4-12; 37:22-38:10); ¶16, Ex. N (SP/RCRV005538-5539); ¶18, Ex. P (SP/RCRV005545); ¶20, Ex. R

1 SP/RCRV005583-5584); ¶24, Ex. V (SP/RCRV005629); ¶27, Ex. Y  
2 (SP/RCRV005640); Kim Decl. ¶12; Choi Decl. ¶8).

3 **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
4 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
5 at 7-8, 12, 20-23, 27-28, 31-34, 45-46, 56-57.) Plaintiffs’ evidence does not  
6 contradict Phoenix Fibers’ statement or evidence, for the reasons set forth in  
7 the Reply Brief submitted currently herewith.

8 51. Plaintiffs allege that the *Shipment Contracts* were negotiated by  
9 numerous individuals, including Lilly Kim and Felipe Salgado, on behalf of  
10 Plaintiffs, and Matt Graham and Steven Johnson, on behalf of Phoenix Fibers.  
11 (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 17:1-7; 201:14-202:25; Maciel Decl.  
12 (App. Ex. C) ¶¶ 19-20; App. Ex. V-W; Song Depo. (App. Ex. D) 55:13-56:13.)

13 **Plaintiffs’ Response:** Disputed to the extent it is suggested that the terms of  
14 the “Shipment Contracts” were different than the terms of the so-called  
15 “Alleged Contract,” otherwise undisputed.

16 **Phoenix Fibers’ Reply:** Plaintiffs fail to cite evidence and thus do not  
17 create a factual dispute.

18 52. The Shipping Contracts only governed the terms of actual shipment  
19 and timing of shipment of materials to Phoenix Fibers, not other terms. (Rule  
20 30(b)(6) Depo. (Kim) (App. Ex. E) 15:1-16:6; 16:21-17:7; 17:14-18:3; Song Depo.  
21 (App. Ex. D) 55:13-56:13.)

22 **Plaintiffs’ Response:** Disputed to the extent it is suggested that the terms of  
23 the “Shipment Contracts” in any way entitled Phoenix Fibers to depart from  
24 the terms of the so-called “Alleged Contract,” otherwise undisputed.

25 **Phoenix Fibers’ Reply:** Plaintiffs fail to cite evidence and thus do not  
26 create a factual dispute.

53. Sweet People donated Miss Me brand clothing items to Phoenix Fibers. (Complaint (App. Ex. H) ¶¶ 28-30.)

**Plaintiffs' Response:** Disputed. Plaintiffs donated MISS ME and ROCK REVIVAL products to Phoenix Fibers pursuant to the terms of parties' agreement—namely, (a) Plaintiffs would deliver unfinished, damaged and otherwise second-quality MISS ME and ROCK REVIVAL denim products to Phoenix Fibers' Chandler, Arizona facility, at no cost to Phoenix Fibers, and (b) Phoenix Fibers would shred all such products into shoddy fiber, which would then be used by Phoenix Fibers' affiliate, Bonded Logic, to manufacture environmentally friendly products such as insulation.

(Salzmann Decl. ¶8, Ex. F.)

**Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections] at 20, 28.) Plaintiffs' evidence does not contradict Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply Brief submitted currently herewith.

54. RCRV donated Rock Revival brand clothing items to Phoenix Fibers. (Complaint (App. Ex. H) ¶¶ 28-30.)

**Plaintiffs' Response:** Disputed. Plaintiffs donated MISS ME and ROCK REVIVAL products to Phoenix Fibers pursuant to the terms of parties' agreement—namely, (a) Plaintiffs would deliver unfinished, damaged and otherwise second-quality MISS ME and ROCK REVIVAL denim products to Phoenix Fibers' Chandler, Arizona facility, at no cost to Phoenix Fibers, and (b) Phoenix Fibers would shred all such products into shoddy fiber, which would then be used by Phoenix Fibers' affiliate, Bonded Logic, to manufacture environmentally friendly products such as insulation.

(Salzmann Decl. ¶8, Ex. F (Song 28:10-29:3; 58:4-60:3; 64:3-8; 65:21-66:3; 67:11-24; 77:3-24; 85:11- 86:1); ¶6, Ex. D (Kim 34:4-12; 37:22-38:10); ¶16,

1 Ex. N (SP/RCRV005538- 5539); ¶18, Ex. P (SP/RCRV005545); ¶20, Ex. R  
2 (SP/RCRV005583-5584); ¶24, Ex. V (SP/RCRV005629); ¶27, Ex. Y  
3 (SP/RCRV005640); Kim Decl. ¶12; Choi Decl. ¶8).

4 **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
5 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
6 at 7-8, 12, 20-23, 27-28, 31-34, 45-46, 56-57.) Plaintiffs’ evidence does not  
7 contradict Phoenix Fibers’ statement or evidence, for the reasons set forth in  
8 the Reply Brief submitted currently herewith.

9 55. Damaged or defective items that Plaintiffs donated to Phoenix Fibers  
10 were marked as either damaged or defective. (Rule 30(b)(6) Depo. (Kim) (App.  
11 Ex. E) 77:13-78:1; 108:10-109:3; 112:9-113:4; 117:20-23; 123:18-124:14; 132:9-  
12 14; App Ex. R-S; Rule 30(b)(6) Depo. (Salgado) (App. Ex. F) 32:23-33:16.)

13 **Plaintiffs’ Response:** Disputed to the extent this statement is intended to  
14 imply that all items that Plaintiffs delivered to Phoenix Fibers for recycling  
15 into shoddy fiber “were marked as either damaged or defective,” even  
16 though all such items were, in fact, damaged, defective or otherwise second-  
17 quality. (Salzmann Decl. ¶6, Ex. D (Kim 112:9-21)).

18 **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
19 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
20 at 20, 27, 48.) Plaintiffs’ evidence does not contradict Phoenix Fibers’  
21 statement or evidence, for the reasons set forth in the Reply Brief submitted  
22 currently herewith.

23 56. No one at Phoenix Fibers ever affixed any Miss Me or Rock Revival  
24 brand name to any product or collection of products. (Kean Decl. (App. Ex. A) ¶¶  
25 11-16.)

26 **Plaintiffs’ Response:** Undisputed.

27 **Phoenix Fibers’ Reply:** No reply, as this fact is undisputed.  
28

1 **E. Post-Donation Recycling**

2 57. Defendant U.S. General Exports (“U.S. General”) is a clothing  
3 recycling company. (Kean Decl. (App. Ex. A) ¶ 13; Johnson Decl. (App. Ex. B) ¶  
4 8; Maciel Decl. (App. Ex. C) ¶ 31; App. Ex. HH.)

5 **Plaintiffs’ Response:** Disputed, to the extent it implies that U.S. General’s  
6 business is limited to clothing recycling. When Mr. Johnson was asked at his  
7 deposition whether it was his understanding that “U.S. General Export is a  
8 recycling company,” his response was “I have no idea.” (Salzmann Decl. ¶4,  
9 Ex. B (Johnson 98:6-8)). Discovery of U.S. General has yet to be concluded.  
10 (Salzmann Decl. ¶¶49-55, 62).

11 **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
12 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
13 at 20, 26.) Plaintiffs’ evidence does not contradict Phoenix Fibers’  
14 statement or evidence, for the reasons set forth in the Reply Brief submitted  
15 currently herewith.

16 58. Phoenix Fibers sold certain products donated by Plaintiffs, as  
17 credential, in bulk and by the pound, to U.S. General. (Johnson Decl. (App. Ex. B)  
18 ¶ 8.)

19 **Plaintiffs’ Response:** Disputed as to the use of the phrase “as credential.”  
20 Although Phoenix Fibers typically refers to “credential” that it sells by a  
21 standard item number (20-040) on its “Packing List,” the “Packing List”  
22 corresponding to Phoenix Fibers’ May 21, 2015 sale of Plaintiffs’ products  
23 to U.S. General—which was filled out by a Phoenix Fibers’ employee—  
24 identified the goods being sold as “Miss Me 3,473 lbs” and “RR [Rock  
25 Revival] 3,294.” (Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-85:8;  
26 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). Moreover, U.S.  
27 General, in turn, sold Plaintiffs’ goods to Defendant SAC International  
28 Trader, Inc. by the unit, making direct reference to the MISS ME and ROCK

1 REVIVAL brand names. (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT  
2 000028-33)).

3 **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
4 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.'s Objections]  
5 at 20, 23-24, 26-27, 34-35, 39-40.) Plaintiffs' evidence does not contradict  
6 Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply  
7 Brief submitted currently herewith.

8 59. Phoenix Fibers first sold credential to U.S. General in 2013 and not  
9 before; however, it was not until 2015 that Phoenix Fibers sold credential to U.S.  
10 General that contained items donated by Sweet People or RCRV. Many of the  
11 items donated by Sweet People and RCRV were converted into shoddy fiber.  
12 (Johnson Decl. (App. Ex. B) ¶ 9.)

13 **Plaintiffs' Response:** Disputed. When Mr. Johnson was asked at his  
14 deposition whether Phoenix Fibers was doing business with Kamel Mroueh,  
15 the owner of U.S. General, at the time he came on board as Plant Manager in  
16 September 2013, his response was "I honestly don't know, but I'm -- yeah, I  
17 don't know. I don't know when the relationship started." (Salzmann Decl.  
18 ¶5, Ex. C (Johnson 33:5-10)). However, Mr. Johnson now states in his  
19 declaration that "[t]o my knowledge, based on my job and a review of  
20 records, Phoenix Fibers did not sell any credential to U.S. General prior to  
21 2013." (Johnson Decl. ¶8). Whatever Phoenix Fibers "records" Mr. Johnson  
22 is referring to in his declaration have not been produced in this litigation.  
23 Moreover, when Mr. Johnson was asked at his deposition if he had "a sense  
24 of the percentage of donated Miss Me and Rock Revival product that was  
25 converted into shoddy as opposed to sold," his response was "I have no  
26 idea." When further asked whether anyone at Phoenix Fibers would know  
27 the answer to that question, Mr. Johnson's response was "No." (Salzmann  
28 Decl. ¶5, Ex. C (Johnson 70:19-24)). Similarly, Mr. Kean verified Phoenix



1       Fibers’ responses to Plaintiffs’ Interrogatories, which state that Phoenix  
2       Fibers (a) “does not know the total volume of [Plaintiffs’ products] it  
3       processed into shoddy fiber,” and (b) “does not know the total volume of  
4       [Plaintiffs’ products] it sold, distributed, supplied or otherwise conveyed to  
5       any Person.” (Salzmann Decl. ¶44, Ex. PP (Phoenix Fibers’ Responses to  
6       First Set of Interrogatories From Plaintiff Sweet People Apparel, Inc.)).

7       **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
8       attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
9       at 20, 26-27, 39.) Plaintiffs’ evidence does not contradict Phoenix Fibers’  
10      statement or evidence, for the reasons set forth in the Reply Brief submitted  
11      currently herewith.

12      60.     Kamel Mroueh was a representative of U.S. General with whom  
13      representatives of Phoenix Fibers communicated to facilitate the sale of credential.  
14      (Johnson Decl. (App. Ex. B) ¶ 10.)

15      **Plaintiffs’ Response:** Disputed to the extent this statement of fact purports  
16      to refer to sales of products other than those that Plaintiff donated to Phoenix  
17      Fibers for recycling into shoddy fiber, otherwise undisputed.

18      **Phoenix Fibers’ Reply:** Plaintiffs present no evidence to create an alleged  
19      dispute.

20      61.     U.S. General, through Mr. Mroueh, only purchased credential from  
21      Phoenix Fibers at Phoenix Fibers’ warehouse. (Johnson Decl. (App. Ex. B) ¶ 11.)  
22      The credential was stored in large bins or boxes. (Johnson Decl. (App. Ex. B) ¶  
23      11.) Mr. Mroueh never inquired into which brands of credential Phoenix Fibers  
24      had in its warehouse nor did Mr. Mroueh ever state that he was interested in certain  
25      brands of credential. (Johnson Decl. (App. Ex. B) ¶ 12.)

26      **Plaintiffs’ Response:** Disputed. Plaintiffs contest the veracity of the  
27      declarant’s statement upon which this statement of fact is based, and have  
28      not yet taken the deposition of U.S. General, the party that purchased

1 Plaintiffs' products from Phoenix Fibers, to test the accuracy of such  
2 statement. (Salzmann Decl. ¶¶48-55, 62). Further, there is evidence that Mr.  
3 Mroueh selected Plaintiffs' product for purchase by identifying Plaintiffs'  
4 brand names on the boxes while being escorted by Mr. Johnson around  
5 Phoenix Fibers' warehouse in which such products were maintained.  
6 (Salzmann Decl. ¶4, Ex. B (Johnson 39:13-16; 71:5-14). Moreover, although  
7 Phoenix Fibers typically refers to the "credential" that it sells by a standard  
8 item number (20-040) on its "Packing List," the "Packing List"  
9 corresponding to Phoenix Fibers' May 21, 2015 sale of Plaintiffs' products  
10 to U.S. General—which was filled out by a Phoenix Fibers' employee—  
11 identified such products as "Miss Me 3,473 lbs" and "RR [Rock Revival]  
12 3,294." (Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11-85:8; 85:24-  
13 86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). Further, U.S. General,  
14 in turn, sold Plaintiffs' to Defendant SAC International Trader, Inc. by the  
15 unit, and with direct reference to the MISS ME and ROCK REVIVAL brand  
16 names. (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT 000028-33)).

17 **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
18 attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections]  
19 at 20, 23-24, 26-27, 34-35, 39-40.) Plaintiffs' evidence does not contradict  
20 Phoenix Fibers' statement or evidence, for the reasons set forth in the Reply  
21 Brief submitted currently herewith.

22 62. U.S. General paid the market rate for credential for all items it  
23 purchased from Phoenix Fibers, which was generally 30¢ to 60¢ per pound. U.S.  
24 General never paid a premium for credential that included Sweet People or Rock  
25 Revival products. (Johnson Decl. (App. Ex. B) ¶ 13; Maciel Decl. (App. Ex. C) ¶  
26 30; App. Ex. GG.)

27 **Plaintiffs' Response:** Disputed. Plaintiffs contest the veracity of the  
28 declarant's statement upon which this statement of fact is based, and have

1 not yet taken the deposition of U.S. General, the party that purchased  
2 Plaintiffs' products from Phoenix Fibers, to test the accuracy of such  
3 statement. Further, whatever Phoenix Fibers records the declarant may have  
4 been referring to have not been produced in discovery in this action.  
5 Plaintiffs further dispute the use of the term "credential" when referring to  
6 Phoenix Fibers' sales of Plaintiffs' secondquality products to U.S. General.  
7 Although Phoenix Fibers typically refers to "credential" that it sells by a  
8 standard item number (20-040) on its "Packing List," the "Packing List"  
9 corresponding to Phoenix Fibers' May 21, 2015 sale of Plaintiffs' products  
10 to U.S. General—which was filled out by a Phoenix Fibers' employee—  
11 identified the goods being sold as "Miss Me 3,473 lbs" and "RR [Rock  
12 Revival] 3,294." (Salzmann Decl. ¶5, Ex. C (Johnson 82:8-19; 84:11- 85:8;  
13 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). Moreover, U.S.  
14 General, in turn, sold Plaintiffs' goods to Defendant SAC International  
15 Trader, Inc. by the unit, making direct reference to the MISS ME and ROCK  
16 REVIVAL brand names. (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT  
17 000028-33)).

18 **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
19 attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections]  
20 at 20, 23-24, 26-27, 29-30, 34-35, 39-40.) Plaintiffs' evidence does not  
21 contradict Phoenix Fibers' statement or evidence, for the reasons set forth in  
22 the Reply Brief submitted currently herewith.

23 63. U.S. General was not confused as to the origin or quality of the  
24 clothing it purchased from Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex.  
25 E) 198:23-199:12; Deposition of Tiffany Wolff ("Wolff Depo. (App. Ex. G)")  
26 125:11:25; 146:14-147:14.)

27 **Plaintiffs' Response:** Disputed to the extent it is suggested that this  
28 statement of fact has any relevance whatsoever to Plaintiffs' claims, which

1 are not premised on the alleged confusion of U.S. General or any other  
2 Defendant.

3 **Phoenix Fibers’ Reply:** Plaintiffs do not present any evidence to create an  
4 alleged dispute.

5 64. Any purchaser of the items that were originally donated to Phoenix  
6 Fibers by Plaintiffs was not confused as to the quality or origin of the credential  
7 that it was purchasing. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 198:23-199:12;  
8 Wolff Depo. (App. Ex. G) 125:11:25; 146:14-147:14.) The purchaser understood  
9 that the items were defective or second-quality goods that originated with Sweet  
10 People or RCRV. (*Id.*)

11 **Plaintiffs’ Response:** Disputed to the extent this statement of fact has any  
12 relevance to Plaintiffs’ claims as they pertain to any of the Defendant  
13 wholesalers (U.S. General, SAC International Traders and Comak Trading),  
14 but there is no evidence that “any purchaser” of the products Plaintiffs’  
15 originally donated to Phoenix Fibers was not confused as to the quality or  
16 origin of such products. Further disputed as to the use of the term  
17 “credential” to describe Plaintiffs’ products. Although Phoenix Fibers  
18 typically refers to the “credential” that it sells by a standard item number  
19 (20-040) on its “Packing List,” the “Packing List” corresponding to Phoenix  
20 Fibers’ May 21, 2015 sale of Plaintiffs’ products to U.S. General—which  
21 was filled out by a Phoenix Fibers’ employee—identified such products as  
22 “Miss Me 3,473 lbs” and “RR [Rock Revival] 3,294.” (Salzmann Decl. ¶5,  
23 Ex. C (Johnson 82:8-19; 84:11-85:8; 85:24-86:2); ¶29, Ex. AA (US GEN  
24 EXPORT 000001-27)). Moreover, U.S. General, in turn, sold Plaintiffs’ to  
25 Defendant SAC International Trader, Inc. by the unit, and with direct  
26 reference to the MISS ME and ROCK REVIVAL brand names. (Salzmann  
27 Decl. ¶30, Ex. BB (US GEN EXPORT 000028-33)).  
28

1        **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
2        attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
3        at 20, 23-24, 26-27, 34-35, 39-40.) Plaintiffs’ evidence does not contradict  
4        Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
5        Brief submitted currently herewith.

6        65.    Phoenix Fibers never advertised that it sold, distributed, manufactured  
7        or otherwise had any connection of any kind with the Miss Me brand or any other  
8        brand of Sweet People. (Kean Decl. (App. Ex. A) ¶¶ 11-16.)

9        **Plaintiffs’ Response:** Disputed. Plaintiffs contest the veracity of the  
10       declarant’s statement upon which this statement of fact is based, and have  
11       not yet taken the deposition of U.S. General, the party that purchased  
12       Plaintiffs’ products from Phoenix Fibers, to test the accuracy of such  
13       statement. Moreover, although Phoenix Fibers typically refers to the  
14       “credential” that it sells by a standard item number (20-040) on its “Packing  
15       List,” the “Packing List” corresponding to Phoenix Fibers’ May 21, 2015  
16       sale of Plaintiffs’ products to U.S. General—which was filled out by a  
17       Phoenix Fibers’ employee—identified the such products as “Miss Me 3,473  
18       lbs” and “RR [Rock Revival] 3,294.” Salzmann Decl. ¶5, Ex. C (Johnson  
19       82:8-19; 84:11-85:8; 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-  
20       27)).

21       **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
22       attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
23       at 20, 23-24, 26-27, 34-35, 39-40.) Plaintiffs’ evidence does not contradict  
24       Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
25       Brief submitted currently herewith.

26       66.    Phoenix Fibers never advertised that it sold, distributed, manufactured  
27       or otherwise had any connection of any kind with the Rock Revival brand or any  
28       other brand of RCRV. (Kean Decl. (App. Ex. A) ¶¶ 11-16.)

1       **Plaintiffs’ Response:** Disputed. Plaintiffs contest the veracity of the  
2       declarant’s statement upon which this statement of fact is based, and have  
3       not yet taken the deposition of U.S. General, the party that purchased  
4       Plaintiffs’ products from Phoenix Fibers, to test the accuracy of such  
5       statement. Moreover, although Phoenix Fibers typically refers to the  
6       “credential” that it sells by a standard item number (20-040) on its “Packing  
7       List,” the “Packing List” corresponding to Phoenix Fibers’ May 21, 2015  
8       sale of Plaintiffs’ products to U.S. General—which was filled out by a  
9       Phoenix Fibers’ employee—identified the such products as “Miss Me 3,473  
10      lbs” and “RR [Rock Revival] 3,294.” Salzmann Decl. ¶5, Ex. C (Johnson  
11      82:8-19; 84:11-85:8; 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-  
12      27)).

13      **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
14      attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.’s Objections]  
15      at 20, 23-24, 26-27, 34-35, 39-40.) Plaintiffs’ evidence does not contradict  
16      Phoenix Fibers’ statement or evidence, for the reasons set forth in the Reply  
17      Brief submitted currently herewith.

18      67.   On October 27, 2017, Ms. Song called Mr. Kean to complain about  
19      certain Miss Me and Rock Revival denim being sold on eBay. After October 27,  
20      2015, Phoenix Fibers never sold any products that Plaintiffs donated to Phoenix  
21      Fibers as credential to anyone. (Kean Decl. (App. Ex. A) ¶ 17.)

22      **Plaintiffs’ Response:** Disputed. Ms. Kim, not Ms. Song, spoke to Mr. Kean  
23      on or around October 27, 2015 (not October 27, 2017). Further, U.S.  
24      General has produced documents reflecting its purchase of 20,958 pounds of  
25      Plaintiffs’ products from Phoenix Fibers on November 10, 2015. Mr.  
26      Johnson signed the bill of lading corresponding to the shipment of these  
27      goods on November 10, 2015. (Salzmann Decl. ¶33, Ex. EE (PHX001040);  
28      ¶29, Ex. AA (US GEN EXPORT 000010-11); Kim Decl. ¶¶19-21).



1        **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
2        attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections]  
3        at 15-16, 23-24, 36.) Plaintiffs' evidence does not contradict Phoenix  
4        Fibers' statement or evidence, for the reasons set forth in the Reply Brief  
5        submitted currently herewith.

6        68. Plaintiffs allege that between December 2015 and February 2016, they  
7        covertly purchased back 29,000 back units of denim containing their trademarks  
8        from the retailers named as defendants in the Complaint. (Complaint (App. Ex. H)  
9        ¶ 40).

10       **Plaintiffs' Response:** Disputed. In an effort to mitigate the incalculable  
11       harm to the MISS ME and ROCK REVIVAL brands being caused by the  
12       widespread availability of second-quality MISS ME and ROCK REVIVAL  
13       denim products, Plaintiffs authorized their investigators to purchase as many  
14       of such products as possible so they could be removed from consumer  
15       markets. Between December 11, 2015 and February 9, 2016 (the day before  
16       Plaintiffs commenced this action), Plaintiffs' investigators purchased over  
17       29,000 units of second-quality MISS ME and ROCK REVIVAL denim  
18       products from Defendants SAC International Traders, Inc., Shaukat Ali  
19       Chohan, Comak Trading, Inc. and Lydia Evilsa Terrazas Cho, at a cost of  
20       over \$190,000. (Kim Decl. ¶¶ 30-32).

21       **Phoenix Fibers' Reply:** Plaintiffs rely on inadmissible evidence in  
22       attempting to create an alleged dispute. (*See* Dkt. No. 98 [Def.'s Objections]  
23       at 19.) Paragraph 32 of Ms. Kim's testimony does not exist. Plaintiffs'  
24       evidence does not contradict Phoenix Fibers' statement or evidence, for the  
25       reasons set forth in the Reply Brief submitted currently herewith.

26       69. In December 2015, with the cooperation of Phoenix Fibers, Plaintiffs  
27       removed from Phoenix Fibers' warehouse all the remaining products, totaling five  
28

1 truckloads and no less than 130,000 pounds, that they had previously donated to  
2 Phoenix Fibers. (Johnson Decl. (App. Ex. B) ¶ 17.)

3 **Plaintiffs’ Response:** Disputed, to the extent of Phoenix Fibers’  
4 representation that Plaintiffs were provided with “all the remaining  
5 products,” as Plaintiffs have no way to test the veracity of that statement.  
6 Further, Plaintiffs dispute that any such removal was done with the  
7 “cooperation” of Phoenix Fibers, as what precipitated such removal of  
8 products from Phoenix Fibers’ warehouse were its false statements that it  
9 had not resold such products, but rather that they had “leaked” out of the  
10 warehouse. (Kim Decl. ¶¶26-29).

11 **Phoenix Fibers’ Reply:** Plaintiffs rely on inadmissible evidence in  
12 attempting to create an alleged dispute. (See Dkt. No. 98 [Def.’s Objections]  
13 at 18-19.) Plaintiffs’ evidence does not contradict Phoenix Fibers’ statement  
14 or evidence, for the reasons set forth in the Reply Brief submitted currently  
15 herewith.

16 70. Plaintiffs cannot prove, nor have they even alleged, that Phoenix  
17 Fibers conspired with other defendants and certainly not to such an extent as to be  
18 co-partners with them.

19 **Plaintiffs’ Response:** Disputed. By law, no specific conspiracy or co-  
20 partner relationship must be pleaded or proven. Rather, the rule is simply  
21 that joint tortfeasors in a trademark case are liable for the entire harm, and  
22 for any monetary award that may issue as a result. See Restatement (Second)  
23 of Torts § 875 (1979). Plaintiffs have so alleged, and have come forward  
24 with evidence that is more than sufficient to comply with such rule.  
25 (Salzmann Decl. ¶12, Ex. J (Plaintiffs’ First Amended Complaint) at ¶¶ 18,  
26 43, 50).

1        **Phoenix Fibers’ Reply:** Plaintiffs’ evidence does not contradict Phoenix  
2        Fibers’ statement or evidence, for the reasons set forth in the Reply Brief  
3        submitted currently herewith.

4        **II. PLAINTIFFS’ STATEMENT OF ADDITIONAL MATERIAL FACTS**  
5        **(AND PHOENIX FIBERS’ RESPONSES)**

6        Phoenix Fibers has concurrently filed objections to many of Plaintiffs’  
7        exhibits and to portions of the declarations that Plaintiffs submitted in support of  
8        their Opposition. Phoenix Fibers has annotated below where those objections,  
9        should the Court sustain them, would impact Plaintiffs’ ability to substantiate their  
10       proposed undisputed material facts.

11       **Plaintiffs and Their Miss Me and Rock Revival Brands**

12       1.     Sweet People and RCRV are affiliated jeanswear companies which  
13       respectively manufacture, promote, distribute and sell high-quality denim and  
14       apparel products throughout the United States under the well-known MISS ME and  
15       ROCK REVIVAL brand names, each of which is the subject of numerous  
16       trademark registrations. (Choi Decl. ¶3; Salzmann Decl. ¶12, Ex. J (Plaintiffs’  
17       First Amended Complaint) at Exs. A, B).

18       **Phoenix Fibers’ Response:** Plaintiffs do not create a material factual  
19       dispute. Plaintiffs’ First Amended Complaint is not evidence of these  
20       purported facts, either. Plaintiffs have presented no admissible evidence that  
21       their denim and apparel products are “high-quality,” or that their brand  
22       names are “well-known.”

23       2.     MISS ME and ROCK REVIVAL products are sold at such prominent  
24       retail outlets as Macy’s, Nordstrom, Dillard’s and The Buckle, both in-store and  
25       online, and through Plaintiffs’ respective ecommerce websites  
26       (<www.missme.com> and <www.rockrevival.com>). MISS ME jeans typically  
27       retail for approximately \$120, while ROCK REVIVAL jeans retail for around  
28       \$170. (Choi Decl. ¶3).

1        **Phoenix Fibers’ Response:** Plaintiffs do not create a material factual  
2        dispute. Plaintiffs’ estimated retail prices differ from the estimated prices  
3        that Phoenix Fibers identified in its Statement of Uncontroverted Facts. (*See*  
4        Dkt. No. 85 [Def.’s SUF] at 2-3 (¶¶ 11, 18).) Plaintiffs did not dispute  
5        Phoenix Fibers’ approximate prices of \$100 per pair of Miss Me brand jeans,  
6        and \$150–\$200 price range for Rock Revival brand jeans. (*See* Dkt. No. 96  
7        [Pls.’ Resp. to Def.’s SUF] at 8-9 (¶¶ 11, 18).)

8        3.        MISS ME and ROCK REVIVAL brand jeans are known to consumers  
9        as high fashion apparel products. Over the past several years, MISS ME and  
10        ROCK REVIVAL denim products have achieved substantial sales success, and  
11        received extensive media coverage in widely circulated fashion magazines. (Choi  
12        Decl. ¶4).

13        **Phoenix Fibers’ Response:** Plaintiffs do not create a material factual  
14        dispute. The cited portions of Mr. Choi’s declaration lack a basis in personal  
15        knowledge and are therefore inadmissible under FRE 602 to support the  
16        contentions that (1) Plaintiffs’ brand names are known to consumers as high  
17        fashion apparel products, (2) Plaintiffs’ denim products have achieved  
18        substantial sales success, and (3) Plaintiffs’ denim products have received  
19        extensive media coverage. (*See* Dkt. No. 98 [Def.’s Objections] at 4-5.)  
20        Thus, Plaintiffs have presented no admissible evidence to support these  
21        contentions.

22        4.        In addition to the unique and distinctive designs created by Plaintiffs’  
23        designers, which are embroidered or stitched onto the pockets and waistband areas  
24        of MISS ME and ROCK REVIVAL denim products, such products are widely  
25        recognized for their superior quality, including both the fit and wash. Plaintiffs  
26        have worked extremely hard to earn this reputation by maintaining strict quality  
27        control policies and procedures that ensure that only products commensurate with  
28        the high quality reputation of MISS ME and ROCK REVIVAL denim products

1 ever enter the stream of commerce. (Choi Decl. ¶4).

2 **Phoenix Fibers' Response:** Plaintiffs do not create a material factual  
3 dispute. The cited portions of Mr. Choi's declaration lack a basis in personal  
4 knowledge and are therefore inadmissible under FRE 602 to support the  
5 contentions that (1) Plaintiffs' designs are unique and distinctive, (2)  
6 Plaintiffs' products are widely recognized for their superior quality, and (3)  
7 Plaintiffs have a high quality reputation. (See Dkt. No. 98 [Def.'s  
8 Objections] at 5.) Thus, Plaintiffs have presented no admissible evidence to  
9 support these contentions.

10 **5.** An unfortunate consequence of these strict quality control procedures  
11 is that the manufacture of a certain volume of MISS ME and ROCK REVIVAL  
12 denim and apparel products that, following careful inspection, Plaintiffs deem unfit  
13 for sale due to damage, improper finish or other failure to meet their rigorous  
14 standards. (Choi Decl. ¶5).

15 **Phoenix Fibers' Response:** Undisputed only that Plaintiffs deem certain of  
16 their denim and apparel products unfit for sale, otherwise not material.

17 **6.** Eric Choi is the CEO of RCRV, and the former CEO of Sweet People,  
18 a position he held until December 1, 2016. He is currently a Director and  
19 shareholder of Sweet People. (Choi Decl. ¶1).

20 **Phoenix Fibers' Response:** Undisputed.

21 **7.** Lilly Kim, Esq., served as the General Counsel of Sweet People and  
22 RCRV from approximately April 2010 to October 2016. Since that time, she has  
23 continued to oversee Plaintiffs' legal matters as an outside consultant. (Kim Decl.  
24 ¶1). Prior to joining Sweet People and RCRV, Ms. Kim was Of Counsel to Reed  
25 Smith LLP. Ms. Kim is a graduate of Loyola Law School. (Salzmann Decl. ¶6,  
26 Ex. D (Kim 31:24-32:7; 55:14-16; 56:25-57:1)).

27 **Phoenix Fibers' Response:** The fact is undisputed, but Paragraph 6 of the  
28 Salzmann Declaration is inadmissible for lack of foundation, and Exhibit D

1 of the Salzmann Declaration is inadmissible for lack of authentication. (*See*  
2 Dkt. No. 98 [Def.’s Objections] at 20, 27.)

3 **8.** Lisa Song held the title of Human Resources Manager at Sweet  
4 People between 2009 and February 2014. (Salzmann Decl. ¶8, Ex. F (Song 21:9-  
5 12)). Although Ms. Song was on Sweet People’s payroll, she was considered an  
6 employee of both Sweet People and RCRV, and her time was allocated between  
7 those two companies, and a third related entity called Deodar Brands, the  
8 proprietor of the MEK DENIM jeanswear brand. (Salzmann Decl. ¶6, Ex. D (Kim  
9 41:18-42:1; 58:24-59:3; *see also* 105:24-106:16); Kim Decl. ¶8; Choi Decl. ¶8).

10 **Phoenix Fibers’ Response:** Plaintiffs do not create a material factual  
11 dispute. Plaintiffs rely on a substantial amount of inadmissible evidence.  
12 (*See* Dkt. No. 98 [Def.’s Objections] at 7,-8, 20, 27-28, 47.) Although  
13 Plaintiffs contend that Ms. Song “was considered an employee of both  
14 Sweet People and RCRV,” Ms. Song testified at deposition that she worked  
15 only for Sweet People. (Song Depo. (App. Ex. D)18:19-19:16; 21:9-12;  
16 App. Ex. P). Ms. Song’s testimony that she was a Sweet People employee  
17 and not an employee of RCRV is supported by her LinkedIn profile, which  
18 only refers to Sweet People as her employer from 2009 through February  
19 2014. (*Id.*)

#### 20 **The Business of Defendant Phoenix Fibers**

21 **9.** Phoenix Fibers was founded in July 2011 “[t]o make shoddy [fiber].”  
22 (Salzmann Decl. ¶3, Ex. A (Quinn 39:8-17); ¶38, Ex. JJ (“*Shredding Clothing Nets*  
23 *Big Rewards for Phoenix Fibers*”)).

24 **Phoenix Fibers’ Response:** Plaintiffs do not create a material factual  
25 dispute. Plaintiffs rely wholly on evidence that is inadmissible based on a  
26 lack of authenticity, lack of personal knowledge, and hearsay. (*See* Dkt. No.  
27 98 [Def.’s Objections] at 20, 24-25, 37, 39.) It is undisputed that Phoenix  
28 Fibers does make shoddy fiber; however it has always done more than just



1 make shoddy fiber. Phoenix Fibers' business consists of three parts: First,  
2 Phoenix Fibers accepts donations of clothing that it then sells, by the pound  
3 and in bulk, as credential. Second, Phoenix Fibers accepts donations of  
4 clothing, converts that clothing through a proprietary shredding process into  
5 shoddy or filler fiber, and then sells it to companies that use this fiber for  
6 various purposes (e.g., for housing, automotive, and appliance insulation).  
7 Third, for a fee, Phoenix Fibers agrees to destroy certain clothing items and  
8 produces a certificate of destruction to the customer. (Johnson Decl. (App.  
9 Ex. B) ¶ 6; Kean Decl. (App. Ex. A) ¶ 8.)

10 **10.** Bonded Logic, Inc., Phoenix Fibers' affiliate, is in the business of  
11 manufacturing insulation products, including its flagship product, UltraTouch  
12 Denim Insulation. Shoddy fiber created from recycled denim is the raw material  
13 that Bonded Logic uses to manufacture UltraTouch Denim Insulation. (Salzmann  
14 Decl. ¶24, Ex. V (SP/RCRV005629); ¶39, Ex. KK ("*Chandler firm grows;*  
15 *recycles denim material into insulation*"); ¶40, Ex. LL ("*Green Chandler company*  
16 *looks to bask in solar savings*"); ¶41, Ex. MM ("*Chandler company turns worn-out*  
17 *blue jeans into insulation, more*")).

18 **Phoenix Fibers' Response:** No material factual dispute that the legal  
19 obligations of one do not apply to the other. Bonded Logic, Inc. and  
20 Phoenix Fibers, Inc. are separate entities. Plaintiffs rely wholly on evidence  
21 that is inadmissible based on a lack of authenticity, lack of personal  
22 knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at 22, 24-25,  
23 33, 37-38.)

24 **11.** Phoenix Fibers, Bonded Logic and United Fibers are affiliated  
25 companies owned by the Kean family, and operated by Jim Kean and his two sons,  
26 Tod Kean and Mike Kean. (Salzmann Decl. ¶38, Ex. JJ ("*Shredding Clothing Nets*  
27 *Big Rewards for Phoenix Fibers*"); ¶39, Ex. KK ("*Chandler firm grows; recycles*  
28 *denim material into insulation*")).

1 **Phoenix Fibers’ Response:** No material factual dispute that the legal  
2 obligations of one do not apply to the other. Bonded Logic, Inc. and  
3 Phoenix Fibers, Inc. are separate entities. Plaintiffs rely wholly on evidence  
4 that is inadmissible based on a lack of authenticity, lack of personal  
5 knowledge, and hearsay. (*See* Dkt. No. 98 [Def.’s Objections] at 24-25, 37.)

6 **12.** “Phoenix Fibers was founded to provide a stable source of raw  
7 material for Bonded Logic’s business of manufacturing denim cloth-based  
8 insulation under the name UltraTouch Denim.” (Salzmann Decl. ¶38, Ex. JJ  
9 (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)).

10 **Phoenix Fibers’ Response:** Plaintiffs do not create a material factual  
11 dispute. Plaintiffs rely wholly on evidence that is inadmissible based on a  
12 lack of authenticity, lack of personal knowledge, and hearsay. (*See* Dkt. No.  
13 98 [Def.’s Objections] at 24, 37.) Phoenix Fibers’ business consists of three  
14 parts: First, Phoenix Fibers accepts donations of clothing that it then sells, by  
15 the pound and in bulk, as credential. Second, Phoenix Fibers accepts  
16 donations of clothing, converts that clothing through a proprietary shredding  
17 process into shoddy or filler fiber, and then sells it to companies that use this  
18 fiber for various purposes (e.g., for housing, automotive, and appliance  
19 insulation). Third, for a fee, Phoenix Fibers agrees to destroy certain  
20 clothing items and produces a certificate of destruction to the customer.  
21 (Johnson Decl. (App. Ex. B) ¶ 6; Kean Decl. (App. Ex. A) ¶ 8.)

22 **13.** Prior to launching Phoenix Fibers, Bonded Logic sourced shoddy  
23 fiber from a shredding company in Brownsville, Texas. (Salzmann Decl. ¶5, Ex. C  
24 (Kean 65:10-66:21)). As Tod Kean, the Managing Partner for Phoenix Fibers and  
25 Bonded Logic, explained: “We used to procure our raw material for the  
26 production of insulation from other shredders. But because of instability in both  
27 prices and supply, we decided to open Phoenix to become vertically integrated by  
28 controlling our own source of raw materials.” (Salzmann Decl. ¶38, Ex. JJ

1 (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”).

2 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
3 rely wholly on evidence that is inadmissible based on a lack of authenticity,  
4 lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s  
5 Objections] at 20, 24, 26-27, 37.) Further, what Bonded Logic did prior to  
6 the existence of Phoenix Fibers is irrelevant.

7 **14.** Today, Phoenix Fibers receives clothing “by the truckload” from  
8 various sources for shredding, and processes 900 to a million pounds of denim and  
9 cotton products into shoddy fiber every month. (Salzmann Decl. ¶4, Ex. B  
10 (Johnson 77:2-4); ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix*  
11 *Fibers*”).

12 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
13 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
14 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at  
15 20, 24, 26, 37.)

16 **15.** The first step in the process Phoenix Fibers uses to convert denim into  
17 shoddy fiber is “a proprietary process that removes all buttons, zippers and tags.”  
18 (Salzmann Decl. ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix*  
19 *Fibers*”).

20 **Phoenix Fibers’ Response:** Plaintiffs do not create a material factual  
21 dispute. Plaintiffs rely wholly on evidence that is inadmissible based on a  
22 lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No.  
23 98 [Def.’s Objections] at 24, 27.) Phoenix Fibers’ business consists of three  
24 parts: First, Phoenix Fibers accepts donations of clothing that it then sells, by  
25 the pound and in bulk, as credential. Second, Phoenix Fibers accepts  
26 donations of clothing, converts that clothing through a proprietary shredding  
27 process into shoddy or filler fiber, and then sells it to companies that use this  
28 fiber for various purposes (e.g., for housing, automotive, and appliance

1 insulation). Third, for a fee, Phoenix Fibers agrees to destroy certain  
2 clothing items and produces a certificate of destruction to the customer.  
3 (Johnson Decl. (App. Ex. B) ¶ 6; Kean Decl. (App. Ex. A) ¶ 8.)

4 **16.** Phoenix Fibers was formed for the sole purpose of recycling denim  
5 into shoddy fiber, and was not in the business of selling “credential” when the  
6 company was launched in July 2011. That aspect of Phoenix Fibers’ business only  
7 came into existence at a later date. There is no evidence that Phoenix Fibers was  
8 engaged in the sale of credential in November 2011, at the time Plaintiffs and  
9 Phoenix Fibers came to an agreement to convert Plaintiffs’ second-quality denim  
10 products into shoddy fiber. (Salzmann Decl. ¶5, Ex. C (Kean 17:20-18:9); ¶38, Ex.  
11 JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”).

12 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
13 rely wholly on evidence that is inadmissible based on a lack of authenticity,  
14 lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s  
15 Objections] at 20, 24, 26-27, 38.) Phoenix Fibers’ business consists of three  
16 parts: First, Phoenix Fibers accepts donations of clothing that it then sells, by  
17 the pound and in bulk, as credential. Second, Phoenix Fibers accepts  
18 donations of clothing, converts that clothing through a proprietary shredding  
19 process into shoddy or filler fiber, and then sells it to companies that use this  
20 fiber for various purposes (e.g., for housing, automotive, and appliance  
21 insulation). Third, for a fee, Phoenix Fibers agrees to destroy certain  
22 clothing items and produces a certificate of destruction to the customer.  
23 (Johnson Decl. (App. Ex. B) ¶ 6; Kean Decl. (App. Ex. A) ¶ 8.)

24 **17.** “Credential” can include things such as “sheets, towels, pillow cases,  
25 lamps, ... bric-a-brac” (Salzmann Decl. ¶4, Ex. B (Johnson 29:20-25)),  
26 “miscellaneous household items” and “toaster ovens” (Salzmann Decl. ¶5, Ex. C  
27 (Kean 15:17-20)).

28 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs

1 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
2 personal knowledge, and hearsay. (*See* Dkt. No. 98 [Def.'s Objections] at  
3 20, 26-27.) In the clothing recycling industry, "credential" means clothing  
4 or shoes, sold in bulk, and sold by the pound. (Johnson Decl. (App. Ex. B) ¶  
5 3; Kean Decl. (App. Ex. A) ¶ 6.)

6 **18.** Tod Kean is the President and CEO of Phoenix Fibers, and the  
7 Secretary and Co-founder of Bonded Logic. (Salzmann Decl. ¶5, Ex. C (Kean  
8 58:11-16)).

9 **Phoenix Fibers' Response:** Undisputed except to the extent that Paragraph  
10 5 of the Salzmann Declaration is inadmissible, and Exhibit C of the  
11 Salzmann Declaration is inadmissible. (*See* Dkt. No. 98 [Def.'s Objections]  
12 at 20, 26-27.)

13 **19.** Matt Graham was the Plant Manager and General Manager of Phoenix  
14 Fibers between 2011 and mid-2013, during which time he served as Mr. Kean's  
15 second-in-command. (Salzmann Decl. ¶5, Ex. C (Kean 28:13-24); Kean Decl.  
16 ¶10).

17 **Phoenix Fibers' Response:** Undisputed except to the extent that Paragraph  
18 5 of the Salzmann Declaration is inadmissible, and Exhibit C of the  
19 Salzmann Declaration is inadmissible. (*See* Dkt. No. 98 [Def.'s Objections]  
20 at 20, 26-27.)

21 **20.** Steve Johnson joined Phoenix Fibers as Plant Manager in September  
22 2013. (Salzmann Decl. ¶4, Ex. B (Johnson 13:9-18)). Neither at that time, nor  
23 prior to this dispute, did Mr. Johnson ever speak to Mr. Kean or anyone else at  
24 Phoenix Fibers about the relationship between Plaintiffs and Phoenix Fibers that  
25 predated his employment. (Salzmann Decl. ¶4, Ex. B (Johnson 57:17-20; 58:23-  
26 59:1)). Nor did Mr. Johnson ever ask anyone whether Phoenix Fibers was  
27 permitted to sell Plaintiffs' products as credential. (Salzmann Decl. ¶4, Ex. B  
28 (Johnson 59:2-7)). Mr. Johnson also is unaware of any written communication

1 between Phoenix Fibers and Plaintiffs wherein Phoenix Fibers stated, in words or  
2 substance, that it reserved the right to sell Plaintiffs' products as credential or  
3 otherwise. (Salzmann Decl. ¶4, Ex. B (Johnson 66:5-9)).

4 **Phoenix Fibers' Response:** Undisputed, except to the extent that Paragraph  
5 4 of the Salzmann Declaration is inadmissible, and Exhibit B of the  
6 Salzmann Declaration is inadmissible. (*See* Dkt. No. 98 [Def.'s Objections]  
7 at 20, 26.)

8 **21.** Mr. Johnson was not even aware that Plaintiffs had been delivering  
9 MISS ME and ROCK REVIVAL denim products to Phoenix Fibers for recycling  
10 into shoddy fiber prior to the time he joined the company in September 2013.  
11 (Salzmann Decl. ¶4, Ex. B (Johnson 59:18-21)).

12 **Phoenix Fibers' Response:** Undisputed, except to the extent it implies that  
13 Phoenix Fibers had an obligation to recycle any items donated by Plaintiffs  
14 into shoddy fiber and to the extent that Paragraph 4 of the Salzmann  
15 Declaration is inadmissible, and Exhibit B of the Salzmann Declaration is  
16 inadmissible. (*See* Dkt. No. 98 [Def.'s Objections] at 20, 26.).

17 **22.** Mr. Graham was no longer employed by Phoenix Fibers at the time  
18 Mr. Johnson joined the company in September 2013. Mr. Johnson was unable to  
19 even identify Mr. Graham as the person who held the position of Plant Manager  
20 before him (Salzmann Decl. ¶4, Ex. B (Johnson 14:8-22)), having testified at his  
21 deposition that "I have no idea who Matt Graham is" (Salzmann Decl. ¶4, Ex. B  
22 (Johnson 122:19)).

23 **Phoenix Fibers' Response:** Undisputed for the purposes of this Motion,  
24 except to the extent that Paragraph 4 of the Salzmann Declaration is  
25 inadmissible, and Exhibit B of the Salzmann Declaration is inadmissible.  
26 (*See* Dkt. No. 98 [Def.'s Objections] at 20, 26.)

27  
28 **Phoenix Fibers' [Alleged] Agreement to Recycle**



**Plaintiffs’ Miss Me and Rock Revival Denim Products into Shoddy Fiber**

23. On November 1, 2011, Eric Choi, the owner and CEO of Sweet People and RCRV, sent an email to Lilly Kim containing a link to Bonded Logic’s website with the message “let’s discuss!” Minutes after receiving this email from Mr. Choi, Ms. Kim forwarded the email to Ms. Song. (Salzmann Decl. ¶6, Ex. D (Kim 67:24-68:8); ¶13, Ex. K (SP/RCRV000065-66); Choi Decl. ¶7; L. Kim Decl. ¶3).

**Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs rely wholly on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at 6-7, 10, 20-21, 27, 30.)

24. Mr. Choi and Ms. Kim subsequently discussed the potential opportunity that they believed Bonded Logic offered to dispose of unfinished, damaged or otherwise second-quality MISS ME and ROCK REVIVAL denim products in an environmentally sound manner—*i.e.*, shredding into shoddy fiber—and decided to take advantage of it. (Choi Decl. ¶7; Kim Decl. ¶7).

**Phoenix Fibers’ Response:** No material factual dispute that either Mr. Choi or Ms. Kim failed to communicate their alleged desire to dispose of unfinished, damaged or otherwise second-quality MISS ME and ROCK REVIVAL denim products by having them shred into shoddy fiber to a representative of Phoenix Fibers. Indeed, Ms. Kim never communicated with anyone from Phoenix Fibers prior to October 2015. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 19:4-15; 175:25-176:3.) Plaintiffs never allege that Mr. Choi spoke with anyone from Phoenix Fibers. As such, this fact is irrelevant. Moreover, Plaintiffs rely on inadmissible evidence. (See Dkt. No. 98 [Def.’s Objections] at 6-7, 11.)

25. Ms. Kim thereafter tasked Ms. Song with finding “a company that

1 recycled denim so that we could recycle our products, rather than sending them to  
2 a landfill.” Salzmänn Decl. ¶6, Ex. D (Kim 18:17-19); ¶8, Ex. F (Song 24:4-9;  
3 26:2-4); Kim Decl. ¶8; Choi Decl. ¶¶7-8). The impetus for this initiative was  
4 Plaintiffs’ desire to find an environmentally responsible way to dispose of  
5 damaged, unfinished, obsolete, returned or otherwise second-quality MISS ME and  
6 ROCK REVIVAL denim products. Salzmänn Decl. ¶6, Ex. D (Kim 29:20-30:17);  
7 Kim Decl. ¶4; Choi Decl. ¶¶4-7).

8 **Phoenix Fibers’ Response:** Undisputed for the purposes of this Motion,  
9 except to the extent that Plaintiffs’ evidence in support of this statement is  
10 inadmissible. (*See* Dkt. No. 98 [Def.’s Objections] at 4-8, 10, 20, 27-28, 41-  
11 42, 44-45.) This statement does not create a genuine dispute of material fact  
12 as to the existence of a contract between Phoenix Fibers and either, or both,  
13 Plaintiffs.

14 **26.** At the time, Plaintiffs would either oversee the destruction of  
15 damaged or otherwise second-quality denim products at their factories in Asia, or  
16 manually cut up the products domestically and send them to a landfill for disposal.  
17 Salzmänn Decl. ¶6, Ex. D (Kim 30:18-25); Kim Decl. ¶5; Choi Decl. ¶5).

18 **Phoenix Fibers’ Response:** Undisputed for the purposes of this Motion,  
19 except to the extent that Plaintiffs’ evidence in support of this statement is  
20 inadmissible. (*See* Dkt. No. 98 [Def.’s Objections] at 20, 27.)

21 **27.** While Plaintiffs wanted to dispose of their second-quality denim  
22 products in an environmentally friendly manner, they were equally, if not more  
23 concerned about permanently removing damaged, unfinished, obsolete, returned or  
24 otherwise second-quality MISS ME and ROCK REVIVAL denim products from  
25 the stream of commerce. Salzmänn Decl. ¶6, Ex. D (Kim 166:18-167:20); Kim  
26 Decl. ¶6; Choi Decl. ¶¶4-10).

27  
28 **Phoenix Fibers’ Response:** No material factual dispute that Phoenix Fibers

1 never agreed to take any action to aid in “permanently removing damaged,  
2 unfinished, obsolete, returned or otherwise second-quality MISS ME and  
3 ROCK REVIVAL denim products from the stream of commerce.” (Rule  
4 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-19; 28:12-29:14; Song  
5 Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5- 52:3; 52:11-17;  
6 61 :21-62:1; Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)  
7 Moreover, a substantial portion of Plaintiffs’ evidence in support of this  
8 statement is inadmissible. (*See* Dkt. No. 98 [Def.’s Objections] at 4-8, 11,  
9 20, 27, 53-54.)

10 No material factual dispute that Plaintiffs and Phoenix Fibers did not form  
11 an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

12 **28.** Ms. Song, acting on behalf of Plaintiffs and under the direction of Ms.  
13 Kim, subsequently entered into an agreement with Phoenix Fibers relating to the  
14 donation of second-quality MISS ME and ROCK REVIVAL denim products,  
15 which were to be destroyed and converted into shoddy fiber. Salzmann Decl. ¶6,  
16 Ex. D (Kim 14:1-9); ¶8, Ex. F (Song 24:4-9); Kim Decl. ¶¶9-12; Choi Decl. ¶¶8,  
17 10).

18 **Phoenix Fibers’ Response:** No material dispute of fact. Plaintiffs have  
19 failed to present admissible evidence that Plaintiffs, or either of them,  
20 entered into an agreement with Phoenix Fibers relating to the donation of  
21 second-quality MISS ME and ROCK REVIVAL denim products, which  
22 were to be destroyed and converted into shoddy fiber. (*See* Dkt. No. 98  
23 [Def.’s Objections] at 7-8, 11-13, 20, 27, 41.) Plaintiffs’ 30(b)(6) witness  
24 admitted: “I don’t know if the word ‘destroyed’ was used in the verbal  
25 discussions” between Ms. Song and Mr. Graham. (Rule 30(b)(6) Depo.  
26 (Kim) (App. Ex. E) 27:13-19.) Moreover, Plaintiffs do not know if, and  
27 cannot prove that, during verbal discussions, Phoenix Fibers ever agreed to  
28 destroy all items that Plaintiffs donated to Phoenix Fibers. (Rule 30(b)(6)

1 Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-19; 28:12-29:14; Song Depo.  
2 (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5-52:3; 52:11-17; 61:21-  
3 62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)

4 Further, Plaintiffs concede that Ms. Kim does not have personal  
5 knowledge of any of the communications that Plaintiffs had with Phoenix  
6 Fibers regarding the alleged contract. (See Dkt. No. 96 [Plaintiffs'  
7 Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence that Ms.  
8 Kim, the General Counsel, has any personal knowledge of the formation of,  
9 or terms of, the Alleged Contract].) And, Mr. Choi is not an individual that  
10 has personal knowledge of any communications between Plaintiffs and  
11 Phoenix Fibers, as is evident by Plaintiffs’ failure to identify him as having  
12 such information in their initial disclosure. (O’Neill Decl. ¶ 2-3, Ex. A-C.)  
13 As such, their statements are irrelevant in determining the existence of, or  
14 the terms of, any contract between Plaintiffs and Phoenix Fibers.

15 No material factual dispute that Plaintiffs and Phoenix Fibers did not form  
16 an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

17 **29.** On November 3, 2011, Ms. Song contacted Bonded Logic regarding  
18 its business of converting denim products into shoddy fiber, and was referred to  
19 Matt Graham at Phoenix Fibers, Bonded Logic’s affiliate. That same day, Ms.  
20 Song spoke with Mr. Graham, who, she understood, had the authority to act on  
21 behalf of Phoenix Fibers, about starting a program whereby Plaintiffs would ship  
22 their damaged, unfinished, obsolete, returned or otherwise second-quality MISS  
23 ME and ROCK REVIVAL denim products to Phoenix Fibers for destruction and  
24 recycling into shoddy fiber. (Salzmann Decl. ¶14, Ex. L (SP/RCRV005530-  
25 5531)).

26 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
27 rely wholly on evidence that is inadmissible based on a lack of authenticity,  
28 lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s

1 Objections] at 21, 30.) Further, there is no material factual dispute because  
2 Plaintiffs purported evidence does not indicate that (1) Bonded Logic’s  
3 business consisted of converting denim products into shoddy fiber, (2) Ms.  
4 Song understand that Mr. Graham had the authority to act on behalf of  
5 Phoenix Fibers, or (3) Ms. Song spoke with Mr. Graham about starting a  
6 program whereby Plaintiffs would ship their damaged, unfinished, obsolete,  
7 returned or otherwise second-quality MISS ME and ROCK REVIVAL  
8 denim products to Phoenix Fibers for destruction and recycling into shoddy  
9 fiber. No material factual dispute that Plaintiffs and Phoenix Fibers did not  
10 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

11 **30.** On November 4, 2011, Mr. Graham sent Ms. Song an email labeled  
12 “High” importance explaining Phoenix Fibers’ shredding services and capabilities.  
13 Mr. Graham made a point of explaining that “[i]f necessary, [Phoenix Fibers] can  
14 remove the tags, buttons and zippers. There is no charge for our recycling  
15 service.” (Salzmann Decl. ¶16, Ex. N (SP/RCRV005538-5539) (emphasis  
16 added)).

17 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
18 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
19 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at  
20 21, 31.) Further, there is no material factual dispute that this purported  
21 email does not contain a portion of any contract or a contract itself.

22 **31.** If the resale of such products as “credential” had been part of the  
23 discussion between Mr. Graham and Ms. Song, there would have been no reason to  
24 remove “the tags, buttons and zippers” from such products. Rather, those items—  
25 tags, buttons and zippers—would only need to be removed if the products were  
26 being recycled into shoddy fiber, as the parties contemplated. (Salzmann Decl.  
27 ¶38, Ex. JJ (“*Shredding Clothing Nets Big Rewards for Phoenix Fibers*”)  
28 (explaining that the first step in the shredding process is “a proprietary process that

removes all buttons, zippers and tags”)).

**Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (*See* Dkt. No. 98 [Def.’s Objections] at 24, 37.) Further, there is no material factual dispute because Plaintiffs’ cited evidence does not support the statement that “If the resale of such products as ‘credential’ had been part of the discussion between Mr. Graham and Ms. Song, there would have been no reason to remove ‘the tags, buttons and zippers’ from such products.” Moreover, there is no material factual dispute because Plaintiffs’ cited evidence does not support the statement that “tags, buttons and zippers . . . would only need to be removed if the products were being recycled into shoddy fiber.” And, there is no material factual dispute because Plaintiffs’ cited evidence does not support the statement “the parties contemplated” that “the products” would be “recycled into shoddy fiber.”

**32.** Later that day, in response to Mr. Graham’s November 4, 2011 email, Ms. Song inquired: “What will be the next step? Is there paperwork to fill out, or do we just start by sending the shipment to you?” (Salzmann Decl. ¶16, Ex. N (SP/RCRV005538-5539)). That same day, Mr. Graham advised that “[t]here is nothing to fill out from our end.” (Salzmann Decl. ¶17, Ex. O (SP/RCRV005542-5543)).

**Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (*See* Dkt. No. 98 [Def.’s Objections] at 21, 31.) Further, there is no material factual dispute that this purported email does not contain a portion of any contract or a contract itself. No material factual dispute that Plaintiffs and Phoenix Fibers did not form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

**33.** On November 15, 2015, Mr. Graham responded to an email from Ms.



1 Song inquiring as to shipping logistics, and agreed to pass along information  
2 regarding some of the carriers that Phoenix Fibers worked with. In conclusion,  
3 Mr. Graham stated “[t]here’s not much else needed. We will receive the material,  
4 schedule it for destruction and away we go! I’ll call you this morning to confirm  
5 this email.” (Salzmann Decl. ¶18, Ex. P (SP/RCRV005545) (emphasis added)).

6 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
7 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
8 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at  
9 21-22, 31.) Further, there is no material factual dispute that this purported  
10 email does not contain a portion of any contract or a contract itself because  
11 Plaintiffs believe that any contract between Plaintiffs and Phoenix Fibers  
12 was entered into prior to November 7, 2011. (Song Depo. (App. Ex. D)  
13 57:14-60:3; 62:8-17; 82:17- 83:7; Maciel Decl. (App. Ex. C) ¶ 28; App. Ex.  
14 EE).

15 **34.** Throughout her discussions with Phoenix Fibers, Ms. Song reported  
16 back to Ms. Kim, Mr. Choi and Steve Kim, Plaintiffs’ then-COO, her superiors  
17 who also worked for both Sweet People and RCRV. (Salzmann Decl. ¶6, Ex. D  
18 (Kim 18:4-24; 20:1-11; 20:25-21:3; 43:8-19); ¶15, Ex. M (SP/RCRV005532-  
19 5533), ¶16, Ex. N (SP/RCRV005538-5539), ¶17, Ex. O (SP/RCRV005542-5543);  
20 Kim Decl. ¶9; Choi Decl. ¶8).

21 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
22 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
23 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at 7-  
24 8, 11-12, 20-21, 27, 30-31, 41-42.) Ms. Song never reported to Ms. Kim or  
25 Mr. Cho that there was a contract between Phoenix Fibers and Plaintiffs, nor  
26 did she report that Phoenix Fibers agreed to destroy any items sent over to  
27 Phoenix Fibers by Plaintiffs. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-  
28 19:15; 27:13-19; 28:12-29:14.)

1           **35.** Ms. Kim saw written communications between Ms. Song and Mr.  
2           Graham wherein Mr. Graham represented that Phoenix Fibers would destroy  
3           Plaintiffs’ second-quality denim products and convert them into shoddy fiber  
4           (Salzmann Decl. ¶6, Ex. D (Kim 28:14-25); Kim Decl. ¶11), and testified that  
5           “[w]e did require that the items be destroyed and recycled” (Salzmann Decl. ¶6,  
6           Ex. D (Kim 27:20-28:1)).

7           **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
8           rely on evidence that is inadmissible based on a lack of authenticity, lack of  
9           personal knowledge, and hearsay. (*See* Dkt. No. 98 [Def.’s Objections] at  
10          13, 20, 27, 43-44.) Further, Plaintiffs have not produced such “written  
11          communications” to Phoenix Fibers and testimony regarding the content of  
12          such written communications is barred as hearsay and under the best  
13          evidence rule. Fed. R. Evid. 802; 1002. Further, Plaintiffs concede that Ms.  
14          Kim does not have personal knowledge of any of the communications that  
15          Plaintiffs had with Phoenix Fibers regarding the alleged contract. (*See* Dkt.  
16          No. 96 [Plaintiffs’ Statement] at 18 [“Undisputed” that “Plaintiffs have no  
17          evidence that Ms. Kim, the General Counsel, has any personal knowledge of  
18          the formation of, or terms of, the Alleged Contract[.]” As such, Ms. Kim’s  
19          statements are irrelevant in determining the existence of, or the terms of, any  
20          contract between Plaintiffs and Phoenix Fibers.

21          **36.** Moreover, Ms. Kim understood that “during the recycling process, the  
22          items would naturally be destroyed as they were made into shoddy fiber.”  
23          (Salzmann Decl. ¶6, Ex. D (Kim 27:20-28:4; 39:5-22); Kim Decl. ¶13).

24          **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
25          rely on evidence that is inadmissible based on a lack of authenticity, lack of  
26          personal knowledge, and hearsay. (*See* Dkt. No. 98 [Def.’s Objections] at  
27          13, 20, 27, 43-44.) Further, Plaintiffs concede that Ms. Kim does not have  
28          personal knowledge of any of the communications that Plaintiffs had with

1 Phoenix Fibers regarding the alleged contract. (*See* Dkt. No. 96 [Plaintiffs’  
2 Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence that Ms.  
3 Kim, the General Counsel, has any personal knowledge of the formation of,  
4 or terms of, the Alleged Contract].) As such, this statement is irrelevant in  
5 determining the existence of, or the terms of, any contract between Plaintiffs  
6 and Phoenix Fibers.

7 **37.** Based on her contemporaneous discussions with Ms. Song regarding  
8 Ms. Song’s conversations with Mr. Graham, Ms. Kim understood that Plaintiffs  
9 had conditioned their agreement to provide Phoenix Fibers with their second-  
10 quality MISS ME and ROCK REVIVAL denim products on Phoenix Fibers’  
11 agreement to convert all such products into shoddy fiber. (Salzmann Decl. ¶6, Ex.  
12 D (Kim 28:14-29:4); Kim Decl. ¶10). Mr. Choi had the same understanding.  
13 (Choi Decl. ¶¶8, 10).

14 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
15 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
16 personal knowledge, and hearsay. (*See* Dkt. No. 98 [Def.’s Objections] at 7-  
17 8, 12, 20, 27, 44.) Further, Plaintiffs concede that Ms. Kim does not have  
18 personal knowledge of any of the communications that Plaintiffs had with  
19 Phoenix Fibers regarding the alleged contract. (*See* Dkt. No. 96 [Plaintiffs’  
20 Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence that Ms.  
21 Kim, the General Counsel, has any personal knowledge of the formation of,  
22 or terms of, the Alleged Contract].) And, Mr. Choi is not an individual that  
23 has personal knowledge of any communications between Plaintiffs and  
24 Phoenix Fibers, as is evident by Plaintiffs’ failure to identify him as having  
25 such information in their initial disclosure. (O’Neill Decl. ¶¶ 2-3, Exs. A-  
26 C.) As such, this statement is irrelevant in determining the existence of, or  
27 the terms of, any contract between Plaintiffs and Phoenix Fibers.

28 Plaintiffs’ 30(b)(6) witness admitted: “I don’t know if the word

‘destroyed’ was used in the verbal discussions” between Ms. Song and Mr. Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover, Plaintiffs do not know if, and cannot prove that, during verbal discussions, Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5-52:3; 52:11-17; 61:21-62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.) No material factual dispute that Plaintiffs and Phoenix Fibers did not form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

38. Based on her contemporaneous understanding of Ms. Song’s oral and written communications with Phoenix Fibers, namely, Mr. Graham’s representation that Phoenix Fibers would “destroy” Plaintiffs’ products and convert them into shoddy fiber, and his statement that Phoenix Fibers did not require a writing to memorialize the parties’ understanding, Ms. Kim was satisfied that a written agreement with Phoenix Fibers was not necessary. (Salzmann Decl. ¶6, Ex. D (Kim 34:4-12; 37:22-38:10); Kim Decl. ¶12).

**Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at 13, 20, 27, 45-46.) Further, Plaintiffs concede that Ms. Kim does not have personal knowledge of any of the communications that Plaintiffs had with Phoenix Fibers regarding the alleged contract. (See Dkt. No. 96 [Plaintiffs’ Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence that Ms. Kim, the General Counsel, has any personal knowledge of the formation of, or terms of, the Alleged Contract].) As such, this statement is irrelevant in determining the existence of, or the terms of, any contract between Plaintiffs and Phoenix Fibers.

Plaintiffs’ 30(b)(6) witness admitted: “I don’t know if the word

1 ‘destroyed’ was used in the verbal discussions” between Ms. Song and Mr.  
2 Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover,  
3 Plaintiffs do not know if, and cannot prove that, during verbal or written  
4 discussions, Phoenix Fibers ever agreed to destroy all items that Plaintiffs  
5 donated to Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-  
6 19:15; 27:13-19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20;  
7 35:21-36:14; 51:5-52:3; 52:11-17; 61:21-62:1; Maciel Decl. (App. Ex. C) ¶¶  
8 32-33; App. Ex. II-JJ.) No material factual dispute that Plaintiffs and  
9 Phoenix Fibers did not form an agreement. (Song Depo. (App. Ex. D)  
10 62:19-63:16.)

11 **39.** Thereafter, Plaintiffs made shipping arrangements with their own  
12 carrier, and on November 22, 2011, Ms. Song contacted Mr. Graham to advise him  
13 that Plaintiffs were ready to make their first delivery of denim products to Phoenix  
14 Fibers for recycling into shoddy fiber on November 29, 2011. In that same email,  
15 Ms. Song asked Mr. Graham to send over “any tax id’s or documents for tax  
16 exemption or leed [Leadership in Energy and Environmental Design] credit.”  
17 (Salzmann Decl. ¶19, Ex. Q (SP/RCRV005570)).

18 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
19 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
20 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at  
21 22, 31.)

22 **40.** Mr. Graham responded to Ms. Song’s inquiry by email dated  
23 December 5, 2011, explaining that “Phoenix Fibers, Inc. is a for-profit recycler and  
24 cannot legally offer a tax credit for our service.” Mr. Graham went on to explain  
25 what happens to the denim products Phoenix Fibers received from Sweet People  
26 and RCRV: “The product we receive may be recycled into any number of  
27 products. This could range from house, automobile or appliance insulation to  
28 prison mattresses.... There is also a certain portion that cannot be used, such a

1 metal pieces in the buttons and zippers. These are removed and recycled  
2 separately.” (Salzmann Decl. ¶20, Ex. R (SP/RCRV005583-5584) (emphasis  
3 added)).

4 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
5 rely wholly on evidence that is inadmissible based on a lack of authenticity,  
6 lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s  
7 Objections] at 22, 32.) Further, there is no material factual dispute that this  
8 purported email does not contain a portion of any contract or a contract itself  
9 because Plaintiffs believe that any contract between Plaintiffs and Phoenix  
10 Fibers was entered into prior to November 7, 2011. (Song Depo. (App. Ex.  
11 D) 57:14-60:3; 62:8-17; 82:17- 83:7; Maciel Decl. (App. Ex. C) ¶ 28; App.  
12 Ex. EE).

13 **41.** Ms. Song understood that Plaintiffs and Phoenix Fibers had reached  
14 an agreement with respect to the shredding of Plaintiffs’ denim products into  
15 shoddy fiber before any products were shipped to Phoenix Fibers, and that  
16 Plaintiffs’ executive management, and Phoenix Fibers’ General Manager, had  
17 approved the agreement. (Salzmann Decl. ¶8, Ex. F (Song 28:10-29:3; 58:4-60:3;  
18 64:3-8; 65:21-66:3; 67:11-24; 77:3-24; 85:11-86:1); *see also* Choi Decl. ¶8).

19 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
20 rely wholly on evidence that is inadmissible based on a lack of authenticity,  
21 lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s  
22 Objections] at 7-8, 20, 28, 56-57.) No material factual dispute that Plaintiffs  
23 and Phoenix Fibers did not form an agreement. (Song Depo. (App. Ex. D)  
24 62:19-63:16.)

25 **42.** When asked at her deposition for her understanding of the agreement  
26 between Plaintiffs and Phoenix Fibers at the time the first shipment of Plaintiffs’  
27 products was made to Phoenix Fibers, Ms. Song stated:

28 My understanding was that we would send the inventory that we needed to --



1 that we wanted to use as part of our -- one of our green initiative programs.  
2 Phoenix Fibers would break down the inventory sent to them, shred it and  
3 create insulation that they would pass along to Bonded Logic, who insulated  
4 houses in need.

5 (Salzmann Decl. ¶8, Ex. F (Song 67:11-24; 28:10-29:3) (emphasis added)).

6 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
7 rely wholly on evidence that is inadmissible based on a lack of authenticity,  
8 lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s  
9 Objections] at 20, 28, 56-57.) No material factual dispute that Plaintiffs and  
10 Phoenix Fibers did not form an agreement. (Song Depo. (App. Ex. D)  
11 62:19-63:16.)

12 **43.** There was never any discussion between Ms. Song and Mr. Graham  
13 regarding Phoenix Fibers' recycling of Plaintiffs' denim products in any other  
14 manner, including the sale of such products as credential or otherwise. The term  
15 "credential" does not appear in any of the communications between Ms. Song and  
16 Mr. Graham.

17 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
18 do not rely on evidence for this statement. Plaintiffs cannot fulfill their  
19 burden of demonstrating there is a genuine dispute of material fact by *failing*  
20 *to cite any evidence*. See generally, *Celotex Corp. v. Catrett*, 477 U.S. 317  
21 (1986).

22 **44.** Ms. Kim and Mr. Choi understood, in November 2011, that there was  
23 a contract between Phoenix Fibers, on the one hand, and Plaintiffs, on the other  
24 hand, whereby (a) Plaintiffs would deliver unfinished, damaged and otherwise  
25 second-quality MISS ME and ROCK REVIVAL denim products to Phoenix  
26 Fibers' Chandler, Arizona facility, at no cost to Phoenix Fibers, and (b) Phoenix  
27 Fibers would shred such products into shoddy fiber, which would then be used by  
28 Phoenix Fibers' affiliate, Bonded Logic, to manufacture environmentally friendly

1 products such as insulation. (Salzmann Decl. ¶¶6, Ex. D (Kim 33:24-34:3); Kim  
2 Decl. ¶¶12, 14; Choi Decl. ¶¶8, 10).

3 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
4 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
5 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at 7-  
6 8, 13- 14, 20, 27, 45-46.) Further, Plaintiffs concede that Ms. Kim does not  
7 have personal knowledge of any of the communications that Plaintiffs had  
8 with Phoenix Fibers regarding the alleged contract. (See Dkt. No. 96  
9 [Plaintiffs’ Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence  
10 that Ms. Kim, the General Counsel, has any personal knowledge of the  
11 formation of, or terms of, the Alleged Contract].) And, Mr. Choi is not an  
12 individual that has personal knowledge of any communications between  
13 Plaintiffs and Phoenix Fibers, as is evident by Plaintiffs’ failure to identify  
14 him as having such information in their initial disclosure. (O’Neill Decl. ¶¶  
15 2-3, Exs. A-C.) As such, this statement is irrelevant in determining the  
16 existence of, or the terms of, any contract between Plaintiffs and Phoenix  
17 Fibers.

18 Plaintiffs’ 30(b)(6) witness admitted: “I don’t know if the word  
19 ‘destroyed’ was used in the verbal discussions” between Ms. Song and Mr.  
20 Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover,  
21 Plaintiffs do not know if, and cannot prove that, during verbal discussions,  
22 Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to  
23 Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-  
24 19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14;  
25 51:5-52:3; 52:11-17; 61:21-62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App.  
26 Ex. II-JJ.)

27 No material factual dispute that Plaintiffs and Phoenix Fibers did not  
28 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

1           **45.** By email dated January 27, 2012, Mr. Graham confirmed to Ms. Song  
2 that Phoenix Fibers had received two additional loads of Plaintiffs' products, and  
3 stated that "Phoenix Fibers is very happy to be working with your company."  
4 (Salzmann Decl. ¶21, Ex. S (SP/RCRV005617)).

5           **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
6 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
7 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
8 22, 32.)

9           **46.** Thereafter, on March 8, 2012, after Plaintiffs had already shipped  
10 multiple tractor-trailer loads of MISS ME and ROCK REVIVAL denim products  
11 to Phoenix Fibers for destruction and recycling into shoddy fiber, Ms. Song told  
12 Mr. Graham that "it would be nice to show the executives pictures of what you  
13 guys do with the denim and also show employees the insulation we make for the  
14 houses," and asked if Mr. Graham if he could provide a sample. (Salzmann Decl.  
15 ¶22, Ex. T (SP/RCRV005624)).

16           **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
17 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
18 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
19 22, 32.) Further, the evidence Plaintiffs cite does not support that statement  
20 that, by March 8, 2012, "Plaintiffs had already shipped multiple tractor-  
21 trailer loads of MISS ME and ROCK REVIVAL denim products to Phoenix  
22 Fibers for destruction and recycling into shoddy fiber."

23           No material factual dispute that Plaintiffs and Phoenix Fibers did not  
24 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

25           **47.** That same day Mr. Graham responded, stating that he would send Ms.  
26 Song "samples of the final product" that day. Hours later, Ms. Song responded to  
27 Mr. Graham and further requested that he send "some pictures of the houses that  
28 we are insulating", and inquired as to the name of the company to which Phoenix

1     Fibers was distributing the insulation.     (Salzmann Decl. ¶23, Ex. U  
2     (SP/RCRV005628)).

3             **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
4     rely on evidence that is inadmissible based on a lack of authenticity, lack of  
5     personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
6     22, 33.) Further, there is no material factual dispute that this purported  
7     email does not contain a portion of any contract or a contract itself because  
8     Plaintiffs believe that any contract between Plaintiffs and Phoenix Fibers  
9     was entered into prior to November 7, 2011. (Song Depo. (App. Ex. D)  
10    57:14-60:3; 62:8-17; 82:17- 83:7; Maciel Decl. (App. Ex. C) ¶ 28; App. Ex.  
11    EE).

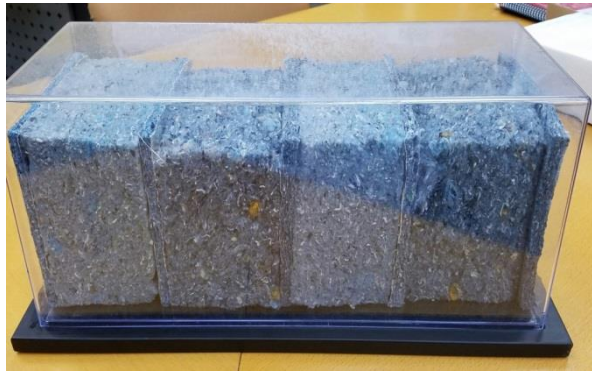
12            No material factual dispute that Plaintiffs and Phoenix Fibers did not  
13    form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

14            **48.** Mr. Graham promptly provided the following response: “Phoenix  
15    Fibers converts the jeans into fiber that gets sent to our affiliate company, Bonded  
16    Logic which in turn, manufactures the end products. We don't get involved with  
17    the actual distribution of the material. I would direct you to their web site for  
18    additional information. www.bondedlogic.com.” (Salzmann Decl. ¶24, Ex. V  
19    (SP/RCRV005629) (emphasis added)).

20            **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
21    rely on evidence that is inadmissible based on a lack of authenticity, lack of  
22    personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
23    22, 33.) Further, there is no material factual dispute that this purported  
24    email does not contain a portion of any contract or a contract itself because  
25    Plaintiffs believe that any contract between Plaintiffs and Phoenix Fibers  
26    was entered into prior to November 7, 2011. (Song Depo. (App. Ex. D)  
27    57:14-60:3; 62:8-17; 82:17- 83:7; Maciel Decl. (App. Ex. C) ¶ 28; App. Ex.  
28    EE).

1 No material factual dispute that Plaintiffs and Phoenix Fibers did not  
2 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

3 **49.** Thereafter, Ms. Song received a sample of Bonded Logic's  
4 UltraTouch Denim insulation from Phoenix Fibers. (Salzmann Decl. ¶25, Ex. W  
5 (SP/RCRV000072)). Eric Choi was so proud of Plaintiffs' partnership with  
6 Phoenix Fibers, and of having found an environmentally sound solution for the  
7 disposal of Plaintiffs' second-quality products, that Plaintiffs prominently  
8 displayed the samples in the conference rooms at Plaintiffs' headquarters, as an  
9 examples of the companies' commitment to the environment. (Choi Decl. ¶ 9). A  
10 photograph of one such display case appears below:



17 (Choi Decl. ¶9; Salzmann Decl. ¶25, Ex. W (SP/RCRV000072)).

18 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
19 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
20 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at 8,  
21 23, 33.) Further, there is no material factual dispute that this purported  
22 email does not contain a portion of any contract or a contract itself because  
23 Plaintiffs believe that any contract between Plaintiffs and Phoenix Fibers  
24 was entered into prior to November 7, 2011. (Song Depo. (App. Ex. D)  
25 57:14-60:3; 62:8-17; 82:17- 83:7; Maciel Decl. (App. Ex. C) ¶ 28; App. Ex.  
26 EE).

27 No material factual dispute that Plaintiffs and Phoenix Fibers did not  
28 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

1           **50.** Later that month, on March 29, 2012, Mr. Graham visited Plaintiffs’  
2 Los Angeles, California facility, and met with Lisa Song and Steve Kim, Sweet  
3 People’s then-COO. (Salzmann Decl. ¶26, Ex. X (SP/RCRV005630-5639)).

4           **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
5 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
6 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at  
7 23, 34.) Plaintiffs submitted evidence does not support the fact that on  
8 March 29, 2012, Mr. Graham visited Plaintiffs’ Los Angeles, California  
9 facility, and met with Lisa Song and Steve Kim, Sweet People’s then-COO.

10           **51.** Shortly thereafter, on April 9, 2012, Mr. Graham sent an email to Ms.  
11 Song following up on their March 29, 2012 in-person meeting. In his email, Mr.  
12 Graham wrote: “Some of our new machinery I told you about has just arrived.  
13 Once we have it set up and running, I will send you a video of us running your  
14 jeans.” (Salzmann Decl. ¶27, Ex. Y (SP/RCRV005640) (emphasis added)).

15           **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
16 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
17 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at  
18 23, 34.)

19           Further, there is no material factual dispute that this purported email  
20 does not contain a portion of any contract or a contract itself because  
21 Plaintiffs believe that any contract between Plaintiffs and Phoenix Fibers  
22 was entered into prior to November 7, 2011. (Song Depo. (App. Ex. D)  
23 57:14-60:3; 62:8-17; 82:17- 83:7; Maciel Decl. (App. Ex. C) ¶ 28; App. Ex.  
24 EE).

25           No material factual dispute that Plaintiffs and Phoenix Fibers did not  
26 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

27           **52.** Once Plaintiffs reached an agreement with Phoenix Fibers, in  
28 November 2011, for the shredding and recycling of their second-quality denim



1 products into shoddy fiber, Plaintiffs began importing their unfinished or second-  
2 quality apparel products from their Asian factories for ultimate shipment to  
3 Phoenix Fibers, rather than having them incinerated by the factories. This  
4 involved a significant expense, but it was an expense Plaintiffs were willing to  
5 incur in order to dispose of their second-quality denim products in an  
6 environmentally safe manner. (Salzmann Decl. ¶6, Ex. D (Kim 98:24-100:10);  
7 Kim Decl. ¶14).

8 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
9 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
10 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
11 14, 20, 27.) Further, Plaintiffs concede that Ms. Kim does not have personal  
12 knowledge of any of the communications that Plaintiffs had with Phoenix  
13 Fibers regarding the alleged contract. (See Dkt. No. 96 [Plaintiffs'  
14 Statement] at 18 ["Undisputed" that "Plaintiffs have no evidence that Ms.  
15 Kim, the General Counsel, has any personal knowledge of the formation of,  
16 or terms of, the Alleged Contract].) As such, this statement is irrelevant in  
17 determining the existence of, or the terms of, any contract between Plaintiffs  
18 and Phoenix Fibers.

19 Plaintiffs' 30(b)(6) witness admitted: "I don't know if the word  
20 'destroyed' was used in the verbal discussions" between Ms. Song and Mr.  
21 Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover,  
22 Plaintiffs do not know if, and cannot prove that, during verbal discussions,  
23 Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to  
24 Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-  
25 19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14;  
26 51:5-52:3; 52:11-17; 61:21-62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App.  
27 Ex. II-JJ.)

28 No material factual dispute that Plaintiffs and Phoenix Fibers did not

1 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

2 **53.** Plaintiffs did not believe it was necessary to request certificates of  
3 destruction from Phoenix Fibers for the second-quality goods they had donated to  
4 Phoenix Fibers for that purpose, because they “assumed that the goods were being  
5 recycled [into shoddy fiber] as [they] were told they were.” (Salzmann Decl. ¶6,  
6 Ex. D (Kim 168:12-19; 26:23-28:5; 39:5-22); Kim Decl. ¶13; Choi Decl. ¶11).

7 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
8 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
9 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at 8-  
10 9, 13, 20, 27, 43-44, 46, 54.) Moreover, Plaintiffs’ evidence does not  
11 support the statement that Plaintiffs “assumed that the goods were being  
12 recycled into shoddy fiber” or that they were told that the goods would be  
13 recycled into shoddy fiber.

14 Further, Plaintiffs concede that Ms. Kim does not have personal  
15 knowledge of any of the communications that Plaintiffs had with Phoenix  
16 Fibers regarding the alleged contract. (See Dkt. No. 96 [Plaintiffs’  
17 Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence that Ms.  
18 Kim, the General Counsel, has any personal knowledge of the formation of,  
19 or terms of, the Alleged Contract].) And, Mr. Choi is not an individual that  
20 has personal knowledge of any communications between Plaintiffs and  
21 Phoenix Fibers, as is evident by Plaintiffs’ failure to identify him as having  
22 such information in their initial disclosure. (O’Neill Decl. ¶¶ 2-3, Exs. A-  
23 C.) As such, this statement is irrelevant in determining the existence of, or  
24 the terms of, any contract between Plaintiffs and Phoenix Fibers.

25 Plaintiffs’ 30(b)(6) witness admitted: “I don’t know if the word  
26 ‘destroyed’ was used in the verbal discussions” between Ms. Song and Mr.  
27 Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover,  
28 Plaintiffs do not know if, and cannot prove that, during verbal discussions,

1 Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to  
2 Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-  
3 19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14;  
4 51:5-52:3; 52:11-17; 61:21-62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App.  
5 Ex. II-JJ.)

6 No material factual dispute that Plaintiffs and Phoenix Fibers did not  
7 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

8 **54.** Over the next four years, during the period November 2011 through  
9 September 2015, Plaintiffs donated hundreds of thousands of pounds of second-  
10 quality MISS ME and ROCK REVIVAL denim products to Phoenix Fibers for  
11 shredding into shoddy fiber. It cost Plaintiffs approximately \$1,000 per shipping  
12 container to transport MISS ME and ROCK REVIVAL denim products from their  
13 facility in Los Angeles, California to Phoenix Fibers' facility in Chandler, Arizona.  
14 (Kim Decl. ¶15).

15 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
16 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
17 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
18 14.)

19 Further, Plaintiffs concede that Ms. Kim does not have personal  
20 knowledge of any of the communications that Plaintiffs had with Phoenix  
21 Fibers regarding the alleged contract. (See Dkt. No. 96 [Plaintiffs'  
22 Statement] at 18 ["Undisputed" that "Plaintiffs have no evidence that Ms.  
23 Kim, the General Counsel, has any personal knowledge of the formation of,  
24 or terms of, the Alleged Contract].) As such, her statement is irrelevant in  
25 determining the existence of, or the terms of, any contract between Plaintiffs  
26 and Phoenix Fibers.

27 Plaintiffs' 30(b)(6) witness admitted: "I don't know if the word  
28 'destroyed' was used in the verbal discussions" between Ms. Song and Mr.

1 Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover,  
2 Plaintiffs do not know if, and cannot prove that, during verbal discussions,  
3 Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to  
4 Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-  
5 19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14;  
6 51:5-52:3; 52:11-17; 61:21-62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App.  
7 Ex. II-JJ.)

8 No material factual dispute that Plaintiffs and Phoenix Fibers did not  
9 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

10 **55.** Prior to this litigation, Mr. Kean was not aware of any of Mr.  
11 Graham's communications with Ms. Song (Salzmann Decl. ¶5, Ex. C (Kean 80:3-  
12 6)), and did not know when Plaintiffs first started to deliver MISS ME and ROCK  
13 REVIVAL products to Phoenix Fibers (Salzmann Decl. ¶5, Ex. C (Kean 64:10-  
14 12)).

15 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
16 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
17 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
18 20, 26-27.)

19 **56.** Phoenix Fibers has made no attempt to locate Mr. Graham in  
20 connection with this litigation (Salzmann Decl. ¶5, Ex. C (Kean 34:1-3)), and  
21 further claims that Mr. Graham "maliciously destroyed" all of his emails when he  
22 was terminated in 2013 because Phoenix Fibers "couldn't afford his position"  
23 (Salzmann Decl. ¶5, Ex. C (Kean 30:6-11; 31:7-22)).

24 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
25 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
26 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
27 20, 26-27.)

28 **Phoenix Fibers' Sale of Miss Me and Rock Revival**

**Denim Products to U.S. General**

57. Although it was uncommon for customers purchasing credential from Phoenix Fibers to visit Phoenix Fibers' warehouse to select such credential (Salzmann Decl. ¶5, Ex. C (Kean 17:6-14)), starting in 2015, Kamel Mroueh, the President of Defendant U.S. General Export, Inc. ("U.S. General"), visited Phoenix Fibers' warehouse on multiple occasions to select credential for purchase. During these visits, Mr. Johnson would accompany Mr. Mroueh as he walked the warehouse floor and selected pallets of denim products that he wanted to purchase (Salzmann Decl. ¶4, Ex. B (Johnson 34:2-10)).

**Phoenix Fibers' Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at 20, 26-27.) Undisputed that Mr. Mroueh visited Phoenix Fibers' warehouse.

58. Mr. Johnson concedes that on a number of occasions in 2015, Mr. Mroueh selected pallets of second-quality MISS ME and ROCK REVIVAL denim products. Mr. Johnson specifically recalls Mr. Mroueh selecting these pallets because the boxes contained on those pallets clearly displayed the Sweet People and/or RCRV business names, and/or the MISS ME and/or ROCK REVIVAL trademarks and logos. (Salzmann Decl. ¶4, Ex. B (Johnson 39:13-16; 71:5-14)).

**Phoenix Fibers' Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at 20, 26.) Undisputed that U.S. General purchased boxes of items donated to Phoenix Fibers by Plaintiffs.

59. Mr. Johnson signed the Bill of Lading that corresponded with a Packing List for certain second-quality MISS ME and ROCK REVIVAL denim products Phoenix Fibers sold to U.S. General in May 2015. The Packing List was filled out by a Phoenix Fibers employee, and recorded the sale of "Miss Me 3,473

lbs” and “RR [Rock Revival] 3,294.” (Salzmann Decl. ¶4, Ex. B (Johnson 82:8-19; 84:11-85:8; 85:24-86:2); ¶29, Ex. AA (US GEN EXPORT 000001-27)). While this document was created by Phoenix Fibers, neither it, nor any other transactional document relating to the multiple sales of pallets of MISS ME and ROCK REVIVAL denim products that Mr. Johnson brokered on Phoenix Fibers’ behalf, have been produced in discovery by Phoenix Fibers.

**Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at 20, 23, 26, 34-35, 39-40.)

**60.** Prior to Phoenix Fibers’ sales of pallets of MISS ME and ROCK REVIVAL denim products to U.S. General in 2015, Phoenix Fibers concedes that all of the MISS ME and ROCK REVIVAL denim products that Plaintiffs donated to Phoenix Fibers were either recycled into shoddy fiber, or retrieved by Plaintiffs in December 2015. (Johnson Decl. ¶¶9, 17).

**Phoenix Fibers’ Response:** No material factual dispute because the evidence cited by Plaintiffs does not support the statement that “[p]rior to Phoenix Fibers’ sales of pallets of MISS ME and ROCK REVIVAL denim products to U.S. General in 2015, Phoenix Fibers concedes that all of the MISS ME and ROCK REVIVAL denim products that Plaintiffs donated to Phoenix Fibers were either recycled into shoddy fiber, or retrieved by Plaintiffs in December 2015.”

**61.** Mr. Johnson cannot recall any other instance where Phoenix Fibers sold denim products that a brand owner had delivered to it free of charge as credential. (Salzmann Decl. ¶4, Ex. B (Johnson 64:16-22; 41:23-42:1)).

**Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.’s Objections] at



20, 26.)

**Plaintiffs Discover Large Quantities of Second-Quality Miss Me and Rock Revival Denim Products in Secondary Channels of Trade**

**62.** In or around the summer of 2015, Plaintiffs began to receive complaints from their sales representatives, authorized retail accounts, and others, regarding the availability of second-quality MISS ME and ROCK REVIVAL denim products for online and wholesale purchase. (Salzmann Decl. ¶6, Ex. D (Kim 106:25-107:11; 108:10-25; 67:2-13); Kim Decl. ¶16).

**Phoenix Fibers' Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at 15, 20, 27, 47-48.)

**63.** Thereafter, Ms. Kim oversaw the purchase of approximately 9,000 units of second-quality MISS ME and ROCK REVIVAL denim products from certain resellers who were selling such goods on eBay and Facebook. Upon examination of the products, Ms. Kim and others within the companies were able to determine that such products had previously been delivered to Phoenix Fibers for shredding and recycling into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 108:22-109:20; 115:18-116:12); Kim Decl. ¶17).

**Phoenix Fibers' Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at 15, 20, 27, 48-49.)

**Plaintiffs Contact Phoenix Fibers Regarding the Availability of Plaintiffs'**

**Products in Secondary Channels of Trade, and Phoenix Fibers Fabricates a Story to Cover Up Its Sales of Such Products**

**64.** In or around the last week of October 2015, Ms. Kim called Mr. Johnson, Phoenix Fibers' Plant Manager, to inquire as to how Phoenix Fibers was storing Plaintiffs' second-quality MISS ME and ROCK REVIVAL denim products before shredding them into shoddy fiber. During that call, Mr. Johnson explained to me that Plaintiffs' goods were received and placed in a secure cage until they were ready to be shredded, at which time they would be removed from the secure cage and shredded into shoddy fiber. (Salzmann Decl. ¶6, Ex. D (Kim 148:19-149:8); Kim Decl. ¶18).

**Phoenix Fibers' Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible based on a lack of authenticity, lack of personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at 15, 20, 27, 51.) No material factual dispute that Plaintiffs were not contractually obligated to shred items donated by Plaintiffs. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14; 51:5-52:3; 52:11-17; 61:21-62:1; 62:19-63:16.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App. Ex. II-JJ.)

**65.** Thereafter, on October 27, 2015, Ms. Kim sent an email to Mr. Kean stating that an issue had come up that she would like to discuss with him at his earliest convenience. (Salzmann Decl. ¶33, Ex. EE (PHX000005)).

**Phoenix Fibers' Response:** No material factual dispute because Plaintiffs rely on evidence that is inadmissible. (See Dkt. No. 98 [Def.'s Objections] at 24, 36.)

**66.** Ms. Kim subsequently spoke with Mr. Kean and advised him that Plaintiffs "had found goods [they] believed were possibly coming from his location, that had been sent there for destruction and recycling." In response, Mr. Kean stated that he would look into it, and mentioned the possibility that there may

1 have been “leakage” (*i.e.*, theft) from the Phoenix Fibers warehouse. Specifically,  
2 Mr. Kean explained that on occasion, the cage where Plaintiffs’ products were  
3 stored would be full, and certain products would be left outside of the cage, thus  
4 being susceptible to theft. At the end of the call, Mr. Kean referred Ms. Kim to  
5 Mr. Johnson, who, he stated, would be able to answer Ms. Kim’s questions  
6 regarding security issues and the possible “leakage” of Plaintiffs’ products from  
7 Phoenix Fibers’ warehouse. (Salzmann Decl. ¶6, Ex. D (Kim 145:20-148:3); Kim  
8 Decl. ¶¶19-20).

9 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
10 rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.’s Objections]  
11 at 15-16, 20, 27, 49-50.)

12 Further, Plaintiffs concede that Ms. Kim does not have personal  
13 knowledge of any of the communications that Plaintiffs had with Phoenix  
14 Fibers regarding the alleged contract. (*See* Dkt. No. 96 [Plaintiffs’  
15 Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence that Ms.  
16 Kim, the General Counsel, has any personal knowledge of the formation of,  
17 or terms of, the Alleged Contract].) As such, her statement is irrelevant in  
18 determining the existence of, or the terms of, any contract between Plaintiffs  
19 and Phoenix Fibers.

20 Plaintiffs’ 30(b)(6) witness admitted: “I don’t know if the word  
21 ‘destroyed’ was used in the verbal discussions” between Ms. Song and Mr.  
22 Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover,  
23 Plaintiffs do not know if, and cannot prove that, during verbal discussions,  
24 Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to  
25 Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-  
26 19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14;  
27 51:5-52:3; 52:11-17; 61:21-62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App.  
28 Ex. II-JJ.)

1 No material factual dispute that Plaintiffs and Phoenix Fibers did not  
2 form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

3 **67.** At no time during Ms. Kim's call with Mr. Kean, or at any time  
4 thereafter, did Mr. Kean state that Phoenix Fibers had sold Plaintiffs' second-  
5 quality MISS ME and ROCK REVIVAL denim products to anyone as credential,  
6 nor did he state that it was Phoenix Fibers' position under the parties' agreement  
7 that Phoenix Fibers was entitled to sell Plaintiffs' products as credential or  
8 otherwise. (Kim Decl. ¶21).

9 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
10 rely on evidence that is inadmissible. (See Dkt. No. 98 [Def.'s Objections]  
11 at 16.)

12 **68.** Later that same day, Ms. Kim called Mr. Johnson and told him what  
13 she had previously explained to Mr. Kean, namely, that Plaintiffs were seeing  
14 significant quantities of second-quality MISS ME and ROCK REVIVAL denim  
15 products being offered for sale in secondary channels of trade, and that Plaintiffs  
16 had examined these products and believed that they had previously been delivered  
17 to Phoenix Fibers for destruction and recycling into shoddy fiber. In response, Mr.  
18 Johnson acknowledged the possibility that Plaintiffs' products had "leaked" from  
19 Phoenix Fibers' warehouse, stated Phoenix Fibers was adding security cameras in  
20 its warehouse, and further stated that he would personally investigate the issue and  
21 report back to Ms. Kim. (Salzmann Decl. ¶6, Ex. D (Kim 151:15-152:24); Kim  
22 Decl. ¶22).

23 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
24 rely on evidence that is inadmissible based on a lack of authenticity, lack of  
25 personal knowledge, and hearsay. (See Dkt. No. 98 [Def.'s Objections] at  
26 16-17, 20, 27, 51-52.)

27 Further, Plaintiffs concede that Ms. Kim does not have personal  
28 knowledge of any of the communications that Plaintiffs had with Phoenix

1       Fibers regarding the alleged contract. (*See* Dkt. No. 96 [Plaintiffs’  
2       Statement] at 18 [“Undisputed” that “Plaintiffs have no evidence that Ms.  
3       Kim, the General Counsel, has any personal knowledge of the formation of,  
4       or terms of, the Alleged Contract].) As such, her statement is irrelevant in  
5       determining the existence of, or the terms of, any contract between Plaintiffs  
6       and Phoenix Fibers.

7               Plaintiffs’ 30(b)(6) witness admitted: “I don’t know if the word  
8       ‘destroyed’ was used in the verbal discussions” between Ms. Song and Mr.  
9       Graham. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 27:13-19.) Moreover,  
10       Plaintiffs do not know if, and cannot prove that, during verbal discussions,  
11       Phoenix Fibers ever agreed to destroy all items that Plaintiffs donated to  
12       Phoenix Fibers. (Rule 30(b)(6) Depo. (Kim) (App. Ex. E) 18:4-19:15; 27:13-  
13       19; 28:12-29:14; Song Depo. (App. Ex. D) 31:5-33:5; 33:9-20; 35:21-36:14;  
14       51:5-52:3; 52:11-17; 61:21-62:1.) Maciel Decl. (App. Ex. C) ¶¶ 32-33; App.  
15       Ex. II-JJ.)

16               No material factual dispute that Plaintiffs and Phoenix Fibers did not  
17       form an agreement. (Song Depo. (App. Ex. D) 62:19-63:16.)

18       **69.** Mr. Johnson engaged in these conversations with Ms. Kim knowing  
19       full well that he was lying to her, and that, in particular, Phoenix Fibers had sold a  
20       substantial number of pallets of MISS ME and ROCK REVIVAL products to Mr.  
21       Mroueh of U.S. General only months earlier:

22               Q. Okay. And during that initial conversation, did you advise Ms.  
23       Kim that Phoenix Fibers had been selling its products to Mr. Mroueh?

24               A. No.

25               Q. But you knew that that was the case at that time; is that right?

26               A. Yes.

27       (Salzmann Decl. ¶4, Ex. B (Johnson 100:23-101:4; *see also* 35:2-8; 70:25-71:10;  
28       99:19-101:8)).

1       **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
2       rely on evidence that is inadmissible based on a lack of authenticity, lack of  
3       personal knowledge, and hearsay. (*See* Dkt. No. 98 [Def.’s Objections] at  
4       20, 26.)

5       **70.** At no time during Ms. Kim’s conversation with Mr. Johnson, or at  
6       any time thereafter, did Mr. Johnson disclose the fact he had personally overseen  
7       the sale of many pallets of second-quality MISS ME and ROCK REVIVAL denim  
8       products to Defendant U.S. General, or state that it was Phoenix Fibers’ position  
9       that Phoenix Fibers was entitled to sell Plaintiffs’ products to anyone as credential  
10      or otherwise. (Kim Decl. ¶23).

11      **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
12      rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.’s Objections]  
13      at 17.)

14      **71.** Mr. Johnson testified that, notwithstanding his failure to so advise Ms.  
15      Kim, he “probably” first advised Mr. Kean that he had overseen the sale of pallets  
16      of MISS ME and ROCK REVIVAL products to Mr. Mroueh at U.S. General “right  
17      after we were notified” by Plaintiffs—*i.e.*, in or around October 27, 2015.  
18      (Salzmann Decl. ¶4, Ex. B (Johnson 103:23-104:5; 106:12-18)).

19      **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
20      rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.’s Objections]  
21      at 20, 26.)

22      **72.** Mr. Kean, however, was unable to recall when, or in what context,  
23      Mr. Johnson first told him that Mr. Johnson had overseen the sale of pallets of  
24      MISS ME and ROCK REVIVAL products to Mr. Mroueh at U.S. General  
25      (Salzmann Decl. ¶5, Ex. C (Kean 10:17-22; 12:7-16)), but believes that the  
26      conversation must have taken place prior to May 18, 2016, the date on which  
27      Plaintiffs’ First Amended Complaint was filed:  
28



1 Q. Well, do you recall whether or not you had that conversation  
2 with Mr. Johnson before the complaint was filed in this case?

3 A. I don't recall.

4 Q. Okay. Do you recall whether or not you had that conversation  
5 with Mr. Johnson before the answer was filed?

6 A. I don't recall. I don't know when the answer was filed, so I'd  
7 need to look at a document.

8 Q. March 29th, 2016.

9 A. I don't recall.

10 Q. Okay. How about as of May 18th, 2016?

11 A. I would make an assumption, yes, I had spoken to him by May.

12 (Salzmann Decl. ¶5, Ex. C (Kean 42:10-22)).

13 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
14 rely on evidence that is inadmissible. (See Dkt. No. 98 [Def.'s Objections]  
15 at 20, 26-27, 40-41.)

16 **73.** After Mr. Johnson advised Mr. Kean that he had overseen Phoenix  
17 Fibers' sale of an unknown number of pallets of MISS ME and ROCK REVIVAL  
18 denim products to Mr. Mroueh at U.S. General, there was never any discussion  
19 between them as to whether or not Phoenix Fibers should advise Plaintiffs that it  
20 had resold their products. (Salzmann Decl. ¶4, Ex. B (Johnson 107:22-25)). In  
21 fact, there was no further discussion between Mr. Johnson and Mr. Kean about this  
22 issue until Phoenix Fibers was preparing its discovery responses in this action in  
23 late May 2016. (Salzmann Decl. ¶4, Ex. B (Johnson 109:24-110:4)).

24 **Phoenix Fibers' Response:** No material factual dispute because  
25 Plaintiffs rely on evidence that is inadmissible. (See Dkt. No. 98 [Def.'s  
26 Objections] at 20, 26.)

27 **74.** Instead, Mr. Kean and Phoenix Fibers continued to ignore the fact that  
28 Mr. Johnson, Phoenix Fibers' Plant Manager, had personally overseen the sale of

1 an unknown number of pallets of MISS ME and ROCK REVIVAL products to Mr.  
2 Mroueh at U.S. General, and had withheld such information from Plaintiffs when  
3 Ms. Kim directly raised the issue.

4 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
5 do not present any evidence.

6 **75.** Although Mr. Johnson had advised Ms. Kim in late October or early  
7 November 2015 that he would look into the possibility that certain MISS ME and  
8 ROCK REVIVAL denim products had been stolen from Phoenix Fibers  
9 warehouse, and then report back to her, Ms. Kim received no further information  
10 or response of any kind from Mr. Johnson or Mr. Kean. (Salzmann Decl. ¶6, Ex.  
11 D (Kim 155:1-6); Kim Decl. ¶24).

12 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
13 rely on evidence that is inadmissible. (See Dkt. No. 98 [Def.'s Objections]  
14 at 17, 20, 27, 52-53.)

15 **76.** When Mr. Johnson spoke to Mr. Kean about his conversation with  
16 Ms. Kim, he advised Mr. Kean that he mentioned to Ms. Kim that "he would  
17 immediately look into any theft issues." Mr. Kean recalls Mr. Johnson looking  
18 into the issue of theft, but Mr. Johnson did not report back to him to advise what he  
19 had determined. (Salzmann Decl. ¶5, Ex. C (Kean 8:14-9:9)).

20 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
21 rely on evidence that is inadmissible. (See Dkt. No. 98 [Def.'s Objections]  
22 at 20, 26-27.)

23 **77.** In the weeks that followed, Plaintiffs continued to see increasing  
24 numbers of second-quality MISS ME and ROCK REVIVAL denim products being  
25 made available online for purchase in secondary channels of trade. Finally, in mid-  
26 November 2015, Ms. Kim instructed Plaintiffs' outside counsel to contact Mr.  
27 Kean, in order to ensure that Plaintiffs' donated products were being properly  
28 handled and secured prior to being shredded and recycled into shoddy fiber. At the

1 time, Plaintiffs had no idea that these products had found their way out of Phoenix  
2 Fibers' warehouse in any way other than through "leakage" (*i.e.*, theft). (Kim  
3 Decl. ¶25).

4 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
5 rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.'s Objections]  
6 at 18.)

7 **78.** The November 17, 2015 letter from Plaintiffs' counsel further stated  
8 that Plaintiffs desired to "resolve th[e] matter in an amicable and business-like  
9 manner" so that the parties could "continue their valued relationship," and asked  
10 that Phoenix Fibers provide Plaintiffs with a written protocol for securely handling  
11 their MISS ME and ROCK REVIVAL products going forward. (Salzmann Decl.  
12 ¶34, Ex. FF (PHX001040-1041)).

13 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
14 rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.'s Objections]  
15 at 24, 36.)

16 **79.** On December 3, 2015, Plaintiffs' outside counsel received a response  
17 to its November 17, 2015 letter from Phoenix Fibers' then-outside counsel, Charles  
18 Wirken, Esq., of the firm of Gust & Rosenfeld. Mr. Wirken's December 3, 2015  
19 letter, on which Mr. Kean was copied, denied that Phoenix Fibers had any  
20 knowledge of Plaintiffs' products being "removed from the main warehouse floor,"  
21 by way of sale of otherwise, and stated that if any such products had been  
22 removed, "it was done without the knowledge and consent of Phoenix Fibers."  
23 (Salzmann Decl. ¶35, Ex. GG (PHX001042–001043) (emphasis added); Kim Decl.  
24 ¶26).

25 **Phoenix Fibers' Response:** Undisputed for purposes of this motion.

26 **80.** Mr. Wirken's letter further advised that Phoenix Fibers would no  
27 longer accept the donation of Plaintiffs' MISS ME and ROCK REVIVAL denim  
28 products. As for the inventory of Plaintiffs' products that Phoenix Fibers had on

1 hand, Mr. Wirken advised that Phoenix Fibers “will either process them as usual,  
2 taking them from the ‘cage’ and processing them through the machinery on the  
3 warehouse floor, or allow [Plaintiffs] to reclaim the unprocessed products at their  
4 expense.” (Salzmann Decl. ¶35, Ex. GG (PHX001042–001043) (emphasis added);  
5 Kim Decl. ¶26). Once again, no mention was made that any of the goods in  
6 question had been sold as credential, in direct violation of the parties’ agreement.

7 **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs rely on  
8 evidence that is inadmissible based on a lack of relevance and lack of  
9 authenticity. (*See* Dkt. No. 98 [Def.’s Objections] at 18.) This statement  
10 does not create a genuine dispute of material fact as to the existence of a  
11 contract between Phoenix Fibers and either, or both, Plaintiffs.

12 **81.** In particular, at no point did Phoenix Fibers or its then-counsel, Mr.  
13 Wirken, (a) disclose to Plaintiffs the fact that Mr. Johnson, Phoenix Fibers’ Plant  
14 Manager, had personally overseen Phoenix Fibers’ sale of an unknown quantity of  
15 MISS ME and ROCK REVIVAL denim products to Mr. Mroueh at U.S. General,  
16 or (b) take the position that Phoenix Fibers had the right to resell Plaintiffs’ denim  
17 products as credential. Salzmann Decl. ¶35, Ex. GG (PHX001042–001043); ¶37,  
18 Ex. II (SP/RCRV000056-60)).

19 **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs rely on  
20 Salzmann Declaration Exhibit II, but it is inadmissible based on a lack of  
21 authentication, a lack of relevance, inadmissible hearsay, and lack of a  
22 foundation in personal knowledge. (*See* Dkt. No. 98 [Def.’s Objections] at  
23 24, 36-37.)

24 **82.** By letter dated December 7, 2015, Plaintiffs’ outside counsel  
25 requested that Mr. Wirken advise as to “the volume of unprocessed Sweet People  
26 and/or RCRV products currently maintained” at Phoenix Fibers’ facility, so that  
27 Plaintiffs could assess the possibility of reclaiming their unprocessed products.  
28 (Salzmann Decl. ¶36, Ex. HH (SP/RCRV000055)).

1       **Phoenix Fibers’ Response:** No material factual dispute. The statements in  
2       this paragraph are irrelevant to any matter in this dispute.

3       **83.** The following day, Mr. Wirken advised Plaintiffs’ outside counsel  
4       that Phoenix Fibers possessed 125 pallets of Plaintiffs’ products, with an estimated  
5       weight of 125,000 to 130,000 pounds. Mr. Wirken further advised that “[t]hese  
6       numbers are decreasing as the product is processed.” Once again, no mention was  
7       made that any products had been or were being resold as credential, or that  
8       anything else was being done with them other than shredding them for processing  
9       into shoddy fiber. That same day, Plaintiffs’ outside counsel advised Mr. Wirken  
10      that Plaintiffs would reclaim all remaining inventory, and requested that Phoenix  
11      Fibers cease processing Plaintiffs’ products. In response, Mr. Wirken represented  
12      that the remaining inventory represented “whatever your clients sent [to Phoenix  
13      Fibers] and was not previously processed.” (Salzmann Decl. ¶37, Ex. II  
14      (SP/RCRV000056-60) (emphasis added)).

15      **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs rely on  
16      Salzmann Declaration Exhibit II, but it is inadmissible based on a lack of  
17      authentication, a lack of relevance, inadmissible hearsay, and lack of a  
18      foundation in personal knowledge. (See Dkt. No. 98 [Def.’s Objections] at  
19      24, 36-37.)

20      **84.** Mr. Johnson testified that the term “processed,” as used by Phoenix  
21      Fibers, refers to denim “put on the line to be turned into shoddy.” (Salzmann Decl.  
22      ¶4, Ex. B (Johnson 21:20-25; 76:15-25)).

23      **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs rely on  
24      Salzmann Declaration Exhibit B, but it is inadmissible based on a lack of  
25      authentication. (See Dkt. No. 98 [Def.’s Objections] at 20, 26.) The  
26      statements in this paragraph are irrelevant to any matter in this dispute.

27      **85.** Mr. Wirken’s representations, however, were not true or accurate,  
28      given that Mr. Johnson, Phoenix Fibers’ Plant Manager, had personally overseen

1 Phoenix Fibers' sale of an unknown quantity of MISS ME and ROCK REVIVAL  
2 denim products to Mr. Mroueh at U.S. General. (Salzmann Decl. ¶4, Ex. B  
3 (Johnson 39:13-16; 71:5-14)).

4 **Phoenix Fibers' Response:** No material factual dispute. Plaintiffs rely on  
5 Salzmann Declaration Exhibit B, but it is inadmissible based on a lack of  
6 authentication. (See Dkt. No. 98 [Def.'s Objections] at 20, 26.)

7 **86.** Shortly thereafter, in mid-December 2015, Plaintiffs reclaimed  
8 approximately 125 pallets of their unprocessed/unsold second-quality MISS ME  
9 and ROCK REVIVAL denim products from Phoenix Fibers' warehouse in  
10 Chandler, Arizona. (Salzmann Decl. ¶6, Ex. D (Kim 25:17-26:11); Kim Decl.  
11 ¶27).

12 **Phoenix Fibers' Response:** Undisputed. However, Plaintiffs rely on  
13 Salzmann Declaration Exhibit D, but it is inadmissible based on a lack of  
14 authentication. (See Dkt. No. 98 [Def.'s Objections] at 20, 27, 42, 43.)

15 **87.** Once the products were returned to Plaintiffs' warehouse in Los  
16 Angeles, California, at Ms. Kim's direction Plaintiffs' warehouse staff conducted a  
17 review of the reclaimed products. That review revealed that among the reclaimed  
18 goods were denim products that Plaintiffs had delivered to Phoenix Fibers for  
19 recycling into shoddy fiber as early as 2012. (Salzmann Decl. ¶6, Ex. D (Kim  
20 25:17-26:11); Kim Decl. ¶28).

21 **Phoenix Fibers' Response:** Plaintiffs do not create a material factual  
22 dispute. Plaintiffs rely on Salzmann Declaration Exhibit D, but it is  
23 inadmissible based on a lack of authentication. (See Dkt. No. 98 [Def.'s  
24 Objections] at 20, 27, 42-43.) Plaintiffs also rely on Kim Declaration ¶ 28,  
25 but it is inadmissible based on inadmissible hearsay and lack of a foundation  
26 in personal knowledge. (See Dkt. No. 98 [Def.'s Objections] at 19.)  
27 Plaintiffs therefore cannot establish a material factual dispute regarding their  
28 contention that the reclaimed goods were denim products that Plaintiffs had



1 delivered to Phoenix Fibers for recycling into shoddy fiber as early as 2012.

2 **88.** In addition, many of the reclaimed boxes of MISS ME and ROCK  
3 REVIVAL denim products had been cut open in one corner, and had apparently  
4 been rummaged through. After viewing certain of these cut-open boxes, it was  
5 Ms. Kim's belief that the boxes were opened in this manner to determine the  
6 quality and/or saleability of the MISS ME and ROCK REVIVAL denim products  
7 contained inside. (Salzmann Decl. ¶6, Ex. D (Kim 181:18-25); Kim Decl. ¶29).

8 **Phoenix Fibers' Response:** No material factual dispute. Plaintiffs rely on  
9 Salzmann Declaration Exhibit D, but it is inadmissible based on a lack of  
10 authentication. (See Dkt. No. 98 [Def.'s Objections] at 20, 27.) Plaintiffs  
11 also rely on Kim Declaration ¶ 29, but it is inadmissible based on a lack of a  
12 foundation in personal knowledge and because it offers an improper lay  
13 opinion regarding the reason why the boxes were cut open. (See Dkt. No. 98  
14 [Def.'s Objections] at 19.) Plaintiffs therefore cannot establish a material  
15 factual dispute regarding their contention that the boxes of reclaimed goods  
16 were opened to determine the quality and/or saleability of the MISS ME and  
17 ROCK REVIVAL denim products contained inside.

18 **89.** Realizing that they had received no forthright responses from Phoenix  
19 Fibers about how their second-quality products were finding their way out of  
20 Phoenix Fibers' warehouse, in or around early December 2015 Plaintiffs hired, at  
21 significant expense, a private investigator to help identify the source of the second-  
22 quality MISS ME and ROCK REVIVAL denim products that were continuing to  
23 flood secondary channels of trade. (Kim Decl. ¶30).

24 **Phoenix Fibers' Response:** No material factual dispute. Plaintiffs rely on  
25 Kim Declaration ¶ 30, but it is inadmissible based on lack of relevance and  
26 also because the contention is argumentative. (See Dkt. No. 98 [Def.'s  
27 Objections] at 19.)

28 **90.** In an effort to mitigate the incalculable harm to the MISS ME and

1 ROCK REVIVAL brands that was being caused by the widespread availability of  
2 second-quality MISS ME and ROCK REVIVAL denim products, which Plaintiffs  
3 had always taken strict measures to prevent, Ms. Kim authorized Plaintiffs'  
4 investigators to purchase as many of such products as possible. (Kim Decl. ¶31).

5 **Phoenix Fibers' Response:** No material factual dispute. Plaintiffs rely on  
6 Kim Declaration ¶ 31, but it is inadmissible based on a lack of a foundation  
7 in personal knowledge, because it offers an improper lay opinion, and  
8 because it is based on hearsay. (*See* Dkt. No. 98 [Def.'s Objections] at 19.)

9 **91.** Between December 30, 2015 and February 9, 2016 (the day before  
10 Plaintiffs commenced this action), Plaintiffs' investigators purchased over 29,000  
11 units of second-quality MISS ME and ROCK REVIVAL denim products from  
12 Defendants SAC International Traders, Inc., Shaukat Ali Chohan, Comak Trading,  
13 Inc. and Lydia Evilsa Terrazas Cho, at a cost of over \$190,000. Documents  
14 produced in discovery in this action establish that these goods were sourced by  
15 these parties from Defendant U.S. General Export, Inc. who, in turn, purchased  
16 them from Phoenix Fibers in sales brokered by Mr. Johnson. (Kim Decl. ¶31).

17 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
18 cannot support their contentions with any admissible evidence. Plaintiffs  
19 rely on Kim Declaration ¶ 31, but it is inadmissible based on a lack of a  
20 foundation in personal knowledge, because it offers an improper lay opinion,  
21 and because it is based on hearsay. (*See* Dkt. No. 98 [Def.'s Objections] at  
22 19.) Moreover, Plaintiffs' purported evidence does not support the  
23 statement that "[d]ocuments produced in discovery in this action establish  
24 that these goods were sourced by these parties from Defendant U.S. General  
25 Export, Inc. who, in turn, purchased them from Phoenix Fibers in sales  
26 brokered by Mr. Johnson." Nor does Plaintiffs' purported evidence does not  
27 support that statement that it cost \$190,000 for the investigator's services.

28 **92.** To this day, as a direct result of Phoenix Fibers' conduct, second-

1 quality MISS ME and ROCK REVIVAL denim products improperly sold by  
2 Phoenix Fibers are being offered for sale in secondary channels, and are continuing  
3 to be sold by downstream customers through eBay and social media platforms such  
4 as Facebook. Phoenix Fibers' inexplicable sale of these products, which Plaintiffs  
5 would never have authorized for distribution to consumers at any level, has caused  
6 irreparable harm to Plaintiffs and their MISS ME and ROCK REVIVAL brands.  
7 (Kim Decl. ¶32; Choi Decl. ¶¶12-13; Salzmann Decl. ¶31, Ex. CC  
8 (SP/RCRV001366-1367); ¶32, Ex. DD (SP/RCRV005756-5757)).

9 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
10 cannot support their contentions with any admissible evidence. Plaintiffs  
11 rely on Kim Declaration ¶ 32, but the declaration contains no such  
12 paragraph, and so it cannot establish a material factual dispute regarding  
13 Plaintiffs' contentions. Plaintiffs also rely on Choi Declaration ¶¶ 12-13, but  
14 it is inadmissible based on a lack of a foundation in personal knowledge.  
15 (See Dkt. No. 98 [Def.'s Objections] at 9-10.) Plaintiffs also rely on  
16 Salzmann Declaration Exhibits CC and DD, but those exhibits are both  
17 inadmissible based on a lack of relevance, a lack of foundation in personal  
18 knowledge, inadmissible hearsay, and lack of authentication. (See Dkt. No.  
19 98 [Def.'s Objections] at 24, 35-36.)

20 **93.** In its Answer to Plaintiffs' Complaint, filed on March 29, 2016—  
21 nearly five months after Ms. Kim first contacted Mr. Kean, and long after Mr.  
22 Johnson conceded that he "probably advised" Mr. Kean of the sale of Plaintiffs'  
23 products to U.S. General—Phoenix Fibers repeatedly and expressly denied  
24 Plaintiffs' allegations, stating that "Defendant lacks any record of Defendant's  
25 donated goods being distributed or sold by Defendant in the same form as donated  
26 by Plaintiffs [i.e., as credential] and on that basis specifically denies such  
27 allegation." (Salzmann Decl. ¶11, Ex. I (Phoenix Fibers' Answer) at ¶¶ 4-6, 32,  
28 37, 41-42, 46-50, 58-65, 67-73, 75-79, 83-94 (emphasis added)).



1        **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
2        cannot support their contentions with any admissible evidence. Plaintiffs  
3        rely on Kim Declaration ¶ 32, but the declaration contains no such  
4        paragraph, and so it cannot establish a material factual dispute regarding  
5        Plaintiffs’ contentions. Plaintiffs also rely on Choi Declaration ¶¶ 12-13, but  
6        it is inadmissible based on a lack of a foundation in personal knowledge.  
7        (*See* Dkt. No. 98 [Def.’s Objections] at 9-10.)

8        **“Factual” Statements in the Declarations of Tod Kean and Steve Johnson**  
9        **That Are Inconsistent with Their Deposition Testimony**

10        **97.** Phoenix Fibers did not have an operational website when the company  
11        launched in July 2011, and Tod Kean does not know when the website went live,  
12        stating at his deposition that he “would want to check the dates on the [Wayback]  
13        machine.” (Salzmann Decl. ¶5, Ex. C (Kean 101:5-25)). Had Mr. Kean checked  
14        the Wayback Machine, he would have learned that the first screen capture of the  
15        phxfibers.com website is from September 13, 2012, more than a year after Phoenix  
16        Fibers commenced its business. (Salzmann Decl. ¶42, Ex. NN (printout of  
17        Wayback Machine screen capture)). Moreover, Phoenix Fibers did not “purchase”  
18        Plaintiffs’ products, and when Mr. Kean was specifically asked how this  
19        statement—“The items we do not use in our shredding process are resold to other  
20        recycling companies”—which refers to the resale or reselling of products, related  
21        Phoenix Fibers’ sale of Plaintiffs’ products, Mr. Kean was unable to identify any  
22        first or initial “sale” of products by Plaintiffs that preceded Phoenix Fibers’  
23        “resale.” (Salzmann Decl. ¶5, Ex. C (Kean 102:1-23)).

24        **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
25        rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.’s Objections]  
26        at 20, 26-27.) Moreover, there is no material factual dispute that the  
27        statements by Mr. Kean are consistent.

28        **98.** Phoenix Fibers has produced no evidence to substantiate Mr. Kean’s

1 claim that the phxfibers.com website has been active “[s]ince [the company’s]  
2 inception” in July 2011. (Kean Decl. ¶9).

3 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
4 clearly misconstrue Mr. Kean’s declaration statement. Further, Plaintiffs  
5 have the burden of producing evidence to survive summary judgment, not  
6 Phoenix Fibers. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Moreover,  
7 there is no material factual dispute that the statements by Mr. Kean are  
8 consistent.

9 **99.** When Mr. Johnson was asked at his deposition whether it was his  
10 understanding that “U.S. General Export is a recycling company,” his response  
11 was “I have no idea.” (Salzmann Decl. ¶4, Ex. B (Johnson 98:6-8)). Yet now, Mr.  
12 Johnson unequivocally states in his declaration that “U.S. General Exports [sic] ...  
13 is a clothing recycler,” and downplays Phoenix Fibers’ involvement in the  
14 shredding of denim products and their conversion into shoddy fiber. (Johnson  
15 Decl. ¶8).

16 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
17 rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.’s Objections]  
18 at 20, 26.) Moreover, there is no material factual dispute that the statements  
19 by Mr. Johnson are consistent. And, Plaintiffs cited evidence does not  
20 support the fact that Mr. Johnson “downplay[ed] Phoenix Fibers’  
21 involvement in the shredding of denim products and their conversion into  
22 shoddy fiber.”

23 **100.** When Mr. Johnson was asked at his deposition whether Phoenix  
24 Fibers was doing business with Kamel Mroueh, the owner of U.S. General, at the  
25 time he came on board as Plant Manager in September 2013, his response was “I  
26 honestly don’t know, but I’m -- yeah, I don’t know. I don’t know when the  
27 relationship started.” (Salzmann Decl. ¶4, Ex. B (Johnson 33:5-10)). However,  
28 Mr. Johnson now unequivocally states in his declaration that “[t]o my knowledge,



1 based on my job and a review of records, Phoenix Fibers did not sell any credential  
2 to U.S. General prior to 2013.” (Johnson Decl. ¶8). Furthermore, whatever  
3 Phoenix Fibers “records” Mr. Johnson is referring to in his declaration have not  
4 been produced in this litigation.

5 **Phoenix Fibers’ Response:** No material factual dispute because Plaintiffs  
6 rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.’s Objections]  
7 at 20, 26, 39.) Moreover, there is no material factual dispute that the  
8 statements by Mr. Johnson are consistent. Plaintiffs fail to cite any evidence  
9 to support the statement that “whatever Phoenix Fibers ‘records’ Mr.  
10 Johnson is referring to in his declaration have not been produced in this  
11 litigation.”

12 **101.** When Mr. Johnson was asked at his deposition whether he knew how  
13 Phoenix Fibers was able to determine the dates of its sales of Plaintiffs’ products to  
14 U.S. General, as disclosed in Phoenix Fibers’ Responses to Sweet People’s First  
15 Set of Interrogatories (*i.e.*, “between early Spring 2015 — early Fall 2015”), he  
16 testified that he did not know, and could not recall if he had discussed the range of  
17 those dates with Mr. Kean prior to the time Mr. Kean verified the accuracy of the  
18 response. (Salzmann Decl. ¶4, Ex. B (Johnson 92:25-93:7); ¶44, Ex. PP  
19 (Defendant Phoenix Fibers, Inc.’s Responses to First Set of Interrogatories From  
20 Plaintiff Sweet People Apparel, Inc.)). In his declaration, however, Mr. Johnson  
21 now states that “[b]ased on my review of Phoenix Fibers’ records and my  
22 recollection, Phoenix Fibers sold certain products donated by Sweet People and  
23 RCRV to U.S. General, as credential, in bulk, and by the pound beginning in  
24 2015.” (Johnson Decl. ¶9). As for the “records” Mr. Johnson is referring to, at his  
25 deposition Mr. Johnson testified that Mr. Mroueh “always” paid in cash, and  
26 therefore the only transactional documents that would exist were handwritten sales  
27 slips that he would have prepared. (Salzmann Decl. ¶4, Ex. B (Johnson 37:18-19;  
28 47:20-48:5)). It is therefore unclear what “Phoenix Fibers records” Mr. Johnson is

1 referring to, as Phoenix Fibers has produced no such records relating to its sales of  
2 Plaintiffs' denim products to U.S. General.

3 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
4 rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.'s Objections]  
5 at 20, 26, 40.) Moreover, there is no material factual dispute that the  
6 statements by Mr. Johnson are consistent.

7 **102.** When Mr. Johnson was asked at his deposition if he had "a sense of  
8 the percentage of donated Miss Me and Rock Revival product that was converted  
9 into shoddy as opposed to sold," his response was "I have no idea." When further  
10 asked whether anyone at Phoenix Fibers would know the answer to that question,  
11 Mr. Johnson's response was "No." (Salzmann Decl. ¶4, Ex. B (Johnson 70:19-  
12 24)). However, Mr. Johnson now states definitively in his declaration that "[p]rior  
13 to 2015, items donated by Sweet People and RCRV were converted into shoddy  
14 fiber." (Johnson Decl. ¶9).

15 **Phoenix Fibers' Response:** No material factual dispute because Plaintiffs  
16 rely on evidence that is inadmissible. (*See* Dkt. No. 98 [Def.'s Objections]  
17 at 20, 26.) Moreover, there is no material factual dispute that the statements  
18 by Mr. Johnson are consistent.

19 **Plaintiffs Have Not Completed Certain Fact Discovery**  
20 **Required to Oppose Phoenix Fibers' Motion, and Fact Discovery Remains**  
21 **Open for Two More Months**

22 **103.** Fact discovery in this action closes on March 13, 2017. (Salzmann  
23 Decl. ¶47).

24 **Phoenix Fibers' Response:** Undisputed.

25 **104.** Plaintiffs have diligently attempted to schedule the deposition of U.S.  
26 General since September 2016. Plaintiffs' counsel first contacted U.S. General's  
27 counsel, Eugene Alkana, on September 16, 2016, to inquire about scheduling the  
28 deposition of U.S. General's President, Kamel Mroueh. That same day, Mr.

1 Alkana advised that he believed that Mr. Mroueh “currently resides in the Congo,”  
2 that he would “talk to him about his travel plans” and would provide Plaintiffs’  
3 counsel with an update during the week of September 26, 2016. (Salzmann Decl.  
4 ¶48).

5 **Phoenix Fibers’ Response:** No material factual dispute that Plaintiffs failed  
6 to diligently attempt to schedule the deposition of U.S. General *prior to*  
7 *September 2016*. No material factual dispute that, overall, Plaintiffs have  
8 failed to diligently attempt to schedule the deposition of U.S. General.  
9 Plaintiffs’ contention is insufficient to establish a need for discovery.

10 **105.** Plaintiffs’ counsel thereafter followed up with Mr. Alkana on  
11 September 26, to again inquire as to Mr. Mroueh’s availability, further stating:  
12 “To the extent Mr. Mroueh will not be returning to the U.S., we would like to  
13 depose Ms. [Nellie] Sanchez. Also we would like to depose an appropriate  
14 corporate representative(s) to address the topics set forth in the attached draft Rule  
15 30(b)(6) notice. We will serve formal notices once we are able to work out dates.”  
16 (Salzmann Decl. ¶49).

17 **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
18 contention is insufficient to establish a need for discovery.

19 **106.** In response, on September 29, 2016, Mr. Alkana advised that Mr.  
20 Mroueh “will not return to the U.S. [until] June 2017,” and offered to explore the  
21 possibility of conducting a video deposition of Mr. Mroueh from the Congo. After  
22 exploring this possibility, it was determined to be unfeasible, and on October 5,  
23 2016, Plaintiffs’ counsel sent an email to Mr. Alkana advising him of the same,  
24 and reiterating Plaintiffs’ counsel’s position that Plaintiffs “are entitled to depose a  
25 knowledgeable corporate representative of U.S. General (whether it is Mr. Mroueh  
26 or someone else) in California where U.S. General is registered to do business and  
27 maintains its principal place of business.” (Salzmann Decl. ¶50, Ex. SS).

28 **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’

1 contention is insufficient to establish a need for discovery.

2 **107.** That same day (October 5, 2016), Plaintiffs' counsel served Plaintiffs'  
3 Rule 30(b)(6) notice of deposition on U.S. General, calling for the deposition to  
4 take place on October 28, 2016. (Salzmann Decl. ¶51, Ex. TT).

5 **Phoenix Fibers' Response:** No material factual dispute. Plaintiffs'  
6 contention is insufficient to establish a need for discovery.

7 **108.** Thereafter, on October 14, 2016, U.S. General served Objections and  
8 Designations in response to Plaintiffs' Rule 30(b)(6) deposition notice, identifying  
9 Ms. Sanchez as U.S. General's corporate representative, and indicating that "[t]he  
10 date currently set for deposition is not acceptable as counsel for U.S. General is not  
11 available on that date," yet offering no alternative dates. (Salzmann Decl. ¶52).

12 **Response:** No material factual dispute. Plaintiffs' contention is insufficient  
13 to establish a need for discovery. Plaintiffs' cannot sufficiently demonstrate  
14 that the discovery is necessary, or that they were diligent in obtaining it by  
15 waiting for counsel for U.S. General to propose dates instead of just doing it  
16 themselves.

17 **109.** On November 14, 2016, Plaintiffs' counsel sent an email to Mr.  
18 Alkana requesting that he provide "Ms. Sanchez's availability for deposition  
19 during the week of December 5." Having received no response from Mr. Alkana,  
20 Plaintiffs' counsel sent him another email on November 23, 2016, again requesting  
21 that he advise of Ms. Sanchez's availability for deposition during the week of  
22 December 5, 2016. That same day, Mr. Alkana responded, stating only: "I will  
23 inquire." Again, having not received a further response from Mr. Alkana,  
24 Plaintiffs' counsel sent him another email on December 7, 2016 inquiring as to Ms.  
25 Sanchez's availability. Mr. Alkana responded the same day, stating "I will get  
26 dates for Ms. Sanchez and report to [you] on Monday." However, Mr. Alkana has  
27 yet to propose any dates for Ms. Sanchez's deposition. (Salzmann Decl. ¶53, Ex.  
28 UU).

1        **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
2        contention is insufficient to establish a need for discovery. Plaintiffs’ cannot  
3        sufficiently demonstrate that the discovery is necessary, or that they were  
4        diligent in obtaining it by waiting for Mr. Alkana to propose dates instead of  
5        just doing it themselves.

6        **110.** Accordingly, despite Plaintiffs’ diligent efforts to schedule the Rule  
7        30(b)(6) deposition of U.S. General, the party that most immediately purchased  
8        Plaintiffs’ Donated Products from Phoenix Fibers—and therefore the party in the  
9        best position to testify as to the representations made by Phoenix Fibers about such  
10       products and sales—Plaintiffs have not yet been able to complete that important  
11       discovery. (Salzmann Decl. ¶54).

12       **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
13       contention is insufficient to establish a need for discovery. Plaintiffs’ cannot  
14       sufficiently demonstrate that the discovery is necessary, or that they were  
15       diligent in obtaining it.

16       **111.** Mr. Johnson has submitted a declaration in support of Phoenix Fibers’  
17       motion wherein he characterizes the nature of U.S. General’s business (Johnson  
18       Decl. ¶8), his communications with Mr. Mroueh (Johnson Decl. ¶¶10-12), and  
19       Phoenix Fibers’ sale of MISS ME and ROCK REVIVAL products to U.S. General  
20       (Johnson Decl. ¶¶9, 13-16).

21       **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
22       contention is insufficient to establish a need for discovery.

23       **112.** To this date, Plaintiffs have not had the opportunity to inquire of a  
24       U.S. General representative as to the veracity of those alleged communications.  
25       (Salzmann Decl. ¶55).

26       **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
27       contention is insufficient to establish a need for discovery. Plaintiffs have  
28       not demonstrated that they have diligently sought the opportunity to depose

1 a U.S. General representative.

2 **113.** Defendant Shaukat Ali Chohan, the owner of Defendant SAC  
3 International Traders, Inc.—a party that purchased approximately 60,000 units of  
4 MISS ME and ROCK REVIVAL products from Phoenix Fibers’ direct customer  
5 U.S. General (Salzmann Decl. ¶30, Ex. BB (US GEN EXPORT 000028-33))—left  
6 the United States in or around January or February 2016. (Salzmann Decl. ¶9, Ex.  
7 G (Wolff 43:25-44:6; 101:13-102:15)).

8 **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
9 contention is insufficient to establish a need for discovery.

10 **114.** The Clerk entered a default against Mr. Chohan in this case on March  
11 28, 2016. (Salzmann Decl. ¶57).

12 **Phoenix Fibers’ Response:** Undisputed.

13 **115.** Mr. Chohan operated his business in close partnership with  
14 Defendants Lydia Evilsa Terrazas Cho and Comak Trading, Inc., and collectively  
15 they engaged in the resale of MISS ME and ROCK REVIVAL products that SAC  
16 International Traders purchased from U.S. General. (Salzmann Decl. ¶9, Ex. G  
17 (Wolff 73:22-76:17); ¶45, Ex. QQ (Plaintiff Sweet People Apparel, Inc.’s First Set  
18 of Interrogatories Directed to Defendant Tiffany Alana Wolff); ¶46, Ex. RR  
19 (Wolff’s Responses to RCRV’s Interrogatories); ¶58).

20 **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
21 contention is insufficient to establish a need for discovery.

22 **116.** Although the two individuals most directly involved in the  
23 distribution of MISS ME and ROCK REVIVAL products sold by Phoenix  
24 Fibers—Mr. Mroueh (U.S. General) and Mr. Chohan (SAC International  
25 Traders)—left the United States shortly following the commencement of this  
26 action, Ms. Cho, Mr. Chohan’s associate from Comak Trading, remains in  
27 California. (Salzmann Decl. ¶59; ¶9, Ex. G (Wolff 43:25-44:6; 73:22-76:17;  
28 101:13-102:15)).



1        **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
2        contention is insufficient to establish a need for discovery.

3        **117.** Plaintiffs’ counsel served a notice of deposition on Ms. Cho on  
4        November 14, 2016, calling for her deposition to take place in December 9, 2016.  
5        Thereafter, on November 30, 2016, Plaintiffs’ counsel sent an email to Ms. Cho  
6        requesting that she confirm her availability for deposition on December 9, 2016 as  
7        noticed. Having received no response from Ms. Cho, Plaintiffs’ counsel sent an  
8        email to Ms. Cho and all counsel of record adjourning her deposition. (Salzmann  
9        Decl. ¶60, Ex. VV).

10       **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
11       contention is insufficient to establish a need for discovery.

12       **118.** Thereafter, on December 6, 2016, Plaintiffs’ counsel received a call  
13       from a representative of Ms. Cho, stating that she was in the process of attempting  
14       to retain new counsel for purposes of her deposition, and requesting that her  
15       deposition be further adjourned until January 2017. (Salzmann Decl. ¶61).

16       **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
17       contention is insufficient to establish a need for discovery.

18       **119.** The depositions of U.S. General and Ms. Cho will be critical to  
19       providing the complete picture as to the nature and scope of Phoenix Fibers’  
20       relationship with U.S. General and Comak Trading, and other defendants up the  
21       chain, which is essential to the question whether Defendants are joint tortfeasors.  
22       In addition, this long-awaited discovery will provide important information about  
23       the manner in which Plaintiffs’ second-quality goods were and are being  
24       improperly distributed, including how Phoenix Fibers presented them to U.S.  
25       General. (Salzmann Decl. ¶62).

26       **Phoenix Fibers’ Response:** No material factual dispute. Plaintiffs’  
27       contentions do not bear on the issues in Phoenix Fibers’ summary judgment  
28       motion. Even if they did, Plaintiffs’ claim that further discovery is needed to

1 determine whether the defendants are joint tortfeasors is belied by Plaintiffs’  
2 argument in Opposition to Phoenix Fibers’ Motion that Phoenix Fibers is a  
3 joint tortfeasor simply by virtue of being “in the distribution chain,” (Dkt.  
4 No. 97 at 18-21 [Opp.]), and by describing that distribution chain in  
5 Statement 115 above, among other places. Similarly, Plaintiffs’ claim that  
6 they need to develop a “complete picture as to the nature and scope of  
7 Phoenix Fibers’ relationship with U.S. General” is belied by their assertion  
8 in the Opposition that “[c]ertainly, the evidence demonstrates that Phoenix  
9 Fibers and U.S. General . . . had a close and unique relationship.” (*Id.* at 20.)  
10 Plaintiffs further fail to support their claim that any of the referenced  
11 discovery is “long-awaited,” unless Plaintiffs are referring to the long time  
12 that they waited before even attempting to notice the depositions of U.S.  
13 General and Ms. Cho. (Dkt. No. 93 at 8, 10 [Salzmann Decl].)

14  
15  
16 DATED: January 13, 2017

HAYNES AND BOONE, LLP

17 By: /s/ Kenneth G. Parker  
18 Kenneth G. Parker  
19 Attorneys for Defendant  
20 Phoenix Fibers, Inc.  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 600 Anton Boulevard, Suite 700, Costa Mesa, California 92626.

I hereby certify that on January 13, 2016, I served the foregoing documents described as ***CONSOLIDATED SEPARATE STATEMENT*** on the following individuals:

Louis S. Ederer, Esq. Matthew T. Salzmann, Esq. ARNOLD AND PORTER LLP 399 Park Avenue New York, NY 90022  [Attorneys for Plaintiffs] [Served Electronically]	John C. Ulin, Esq. Eric D. Mason, Esq. ARNOLD AND PORTER LLP 777 South Figueroa Street, 44 <sup>th</sup> Fl. Los Angeles, CA 90017-5844  [Attorneys for Plaintiffs] [Served Electronically]
Eugene S Alkana Eugene S Alkana Law Office 131 North El Molino Avenue Suite 310 Pasadena, CA 91101  [Attorneys for U.S. General Export] [Served Electronically]	J T Fox Law Offices of JT Fox and Associates 556 South Fair Oaks Avenue Suite 444 Pasadena, CA 91105  [Attorneys for Tiffany Alana Wolff] [Served Electronically]
Lydia Evilsa Terrazas Cho 702 N Crescent Drive Beverly Hills, CA 90210 <i>Pro Se</i>  [Served via U.S. Mail]	Comak Trading 2550 S Soto St, Vernon, CA 90058  [Served via U.S. Mail]

I declare that I am a member of the bar of this Court.

Executed on January 13, 2016, at Costa Mesa, California.

/s/ Christopher B. Maciel  
Christopher B. Maciel